



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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Miller Building
Des Moines, IA 50319
Telephone: (515)281-6766

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC
(chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication
date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

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Dec. 30 '05	Jan. 18 '06	Feb. 7 '06	Feb. 22 '06	Feb. 24 '06	Mar. 15 '06	Apr. 19 '06	July 17 '06
Jan. 13	Feb. 1	Feb. 21	Mar. 8	Mar. 10	Mar. 29	May 3	July 31
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Feb. 24	Mar. 15	Apr. 4	Apr. 19	Apr. 21	May 10	June 14	Sept. 11
Mar. 10	Mar. 29	Apr. 18	May 3	May 5	May 24	June 28	Sept. 25
Mar. 24	Apr. 12	May 2	May 17	***May 17***	June 7	July 12	Oct. 9
Apr. 7	Apr. 26	May 16	May 31	June 2	June 21	July 26	Oct. 23
Apr. 21	May 10	May 30	June 14	June 16	July 5	Aug. 9	Nov. 6
May 5	May 24	June 13	June 28	***June 28***	July 19	Aug. 23	Nov. 20
May 17	June 7	June 27	July 12	July 14	Aug. 2	Sept. 6	Dec. 4
June 2	June 21	July 11	July 26	July 28	Aug. 16	Sept. 20	Dec. 18
June 16	July 5	July 25	Aug. 9	Aug. 11	Aug. 30	Oct. 4	Jan. 1 '07
June 28	July 19	Aug. 8	Aug. 23	***Aug. 23***	Sept. 13	Oct. 18	Jan. 15 '07
July 14	Aug. 2	Aug. 22	Sept. 6	Sept. 8	Sept. 27	Nov. 1	Jan. 29 '07
July 28	Aug. 16	Sept. 5	Sept. 20	Sept. 22	Oct. 11	Nov. 15	Feb. 12 '07
Aug. 11	Aug. 30	Sept. 19	Oct. 4	Oct. 6	Oct. 25	Nov. 29	Feb. 26 '07
Aug. 23	Sept. 13	Oct. 3	Oct. 18	Oct. 20	Nov. 8	Dec. 13	Mar. 12 '07
Sept. 8	Sept. 27	Oct. 17	Nov. 1	Nov. 3	Nov. 22	Dec. 27	Mar. 26 '07
Sept. 22	Oct. 11	Oct. 31	Nov. 15	***Nov. 15***	Dec. 6	Jan. 10 '07	Apr. 9 '07
Oct. 6	Oct. 25	Nov. 14	Nov. 29	Dec. 1	Dec. 20	Jan. 24 '07	Apr. 23 '07
Oct. 20	Nov. 8	Nov. 28	Dec. 13	***Dec. 13***	Jan. 3 '07	Feb. 7 '07	May 7 '07
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PRINTING SCHEDULE FOR IAB

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23	Friday, April 21, 2006	May 10, 2006
24	Friday, May 5, 2006	May 24, 2006
26	Wednesday, May 17, 2006	June 7, 2006

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. West, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 2.0.0, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

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kathleen.west@legis.state.ia.us

2. Alternatively, you may send a PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, Third Floor West, Ola Babcock Miller Building, or included with the documents submitted to the Governor's Administrative Rules Coordinator.

Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies, but not on the diskettes; diskettes are returned unchanged.

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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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Mortgage bankers and mortgage brokers, adopt ch 18 IAB 3/29/06 ARC 5011B	Division Conference Room 200 E. Grand Ave. Des Moines, Iowa	April 18, 2006 10 a.m.
CORRECTIONS DEPARTMENT[201]		
Sex offender management and treatment, 38.4(3), 38.4(5) IAB 4/12/06 ARC 5026B	510 E. 12th Street Des Moines, Iowa	May 2, 2006 11 a.m. to 1 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Air quality, amendments to ch 22; 23.1 IAB 4/12/06 ARC 5041B	Conference Rooms Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	May 12, 2006 1 p.m.
Commercial septic tank cleaners, ch 68, 69.17 IAB 4/12/06 ARC 5042B	Suite I Conference Rooms 401 SW Seventh St. Des Moines, Iowa	May 3, 2006 1 p.m.
	Room 224, PapaJohn Center NIACC 500 College Dr. Mason City, Iowa	May 4, 2006 10 a.m.
	Meeting Room Public Library 507 Poplar St. Atlantic, Iowa	May 9, 2006 1 p.m.
	Room 606, Suite C Arrowhead AEA 824 Flindt Dr. Storm Lake, Iowa	May 10, 2006 10 a.m.
	Delaware County Fairgrounds 200 E. Acers St. Manchester, Iowa	May 11, 2006 10 a.m.
	Public Library 120 E. Main Washington, Iowa	May 16, 2006 10 a.m.
NATURAL RESOURCE COMMISSION[571]		
Removal of Iowa River Corridor Area in Iowa County from list of wildlife refuges, 52.1(2) IAB 3/29/06 ARC 5019B (ICN Network)	Contact (515)281-5918 or visit the department's Web site at www.iowadnr.com for list of 18 ICN hearing locations.	April 18, 2006 6:30 to 9 p.m.
Waterfowl and coot hunting seasons, 91.1, 91.3, 91.4, 91.6 IAB 3/29/06 ARC 5018B (ICN Network)	Contact (515)281-5918 or visit the department's Web site at www.iowadnr.com for list of 18 ICN hearing locations.	April 18, 2006 6:30 to 9 p.m.

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Game harvest reporting and landowner-tenant registration, adopt ch 95 IAB 3/29/06 ARC 5020B (ICN Network)	Contact (515)281-5918 or visit the department's Web site at www.iowadnr.com for list of 18 ICN hearing locations.	April 18, 2006 6:30 to 9 p.m.
Wild turkey spring hunting, 98.1, 98.3, 98.5(8), 98.6(1), 98.7, 98.15 IAB 3/29/06 ARC 5021B (ICN Network)	Contact (515)281-5918 or visit the department's Web site at www.iowadnr.com for list of 18 ICN hearing locations.	April 18, 2006 6:30 to 9 p.m.
Deer hunting by residents, 106.1, 106.2(5), 106.6 to 106.8, 106.10(1), 106.12, 106.13 IAB 3/29/06 ARC 5015B (ICN Network)	Contact (515)281-5918 or visit the department's Web site at www.iowadnr.com for list of 18 ICN hearing locations.	April 18, 2006 6:30 to 9 p.m.
Bag limit for white-tailed jackrabbits, 107.2 IAB 3/29/06 ARC 5016B (ICN Network)	Contact (515)281-5918 or visit the department's Web site at www.iowadnr.com for list of 18 ICN hearing locations.	April 18, 2006 6:30 to 9 p.m.
Trapping season for river otters, 108.6 to 108.9 IAB 3/29/06 ARC 5017B (ICN Network)	Contact (515)281-5918 or visit the department's Web site at www.iowadnr.com for list of 18 ICN hearing locations.	April 18, 2006 6:30 to 9 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

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Dietitians—overpayments, 80.1 IAB 3/29/06 ARC 4988B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	April 18, 2006 9 to 9:30 a.m.
Mortuary science—overpayments, 99.1 IAB 4/12/06 ARC 5029B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	May 2, 2006 9:30 to 10 a.m.
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Occupational therapists—supervision of OT assistants, 206.1, 206.8 IAB 3/29/06 ARC 4989B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	April 18, 2006 1:30 to 2 p.m.
Social workers, 279.1, 281.3(2) IAB 3/15/06 ARC 4958B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	April 20, 2006 9 to 9:30 a.m.
Speech pathologists and audiologists—overpayments, 299.1 IAB 4/12/06 ARC 5025B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	May 2, 2006 10:30 to 11 a.m.

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PUBLIC HEALTH DEPARTMENT[641]

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PUBLIC SAFETY DEPARTMENT[661]

Certification of automatic fire extinguishing system contractors, adopt ch 275 IAB 3/29/06 ARC 5022B	Fire Marshal Division Conference Rm. Suite N 401 SW Seventh St. Des Moines, Iowa	April 19, 2006 10 a.m.
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TRANSPORTATION DEPARTMENT[761]

Early renewal of licenses, 605.25(2) IAB 4/12/06 ARC 5040B	DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	May 4, 2006 10 a.m. (If requested)
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Eligibility, certification, and reporting requirements for eligible telecommunications carriers, amendments to chs 1, 22, 39 IAB 3/15/06 ARC 4977B	Hearing Room 350 Maple St. Des Moines, Iowa	April 26, 2006 9 a.m.
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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CORRECTIONS DEPARTMENT[201]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 904.108 and chapter 903B, the Iowa Department of Corrections hereby gives Notice of Intended Action to amend Chapter 38, “Sex Offender Management and Treatment,” Iowa Administrative Code.

The proposed amendments remove the requirement of a polygraph for the psychosexual assessment that is a part of presentence investigations for offenders whose convictions may require hormonal intervention therapy and update the standards for sex offender educational/treatment programs to the December 2005 revision date.

Any interested person may make written suggestions or comments on these proposed amendments on or before May 2, 2006. Such written materials should be directed to the Legal and Policy Department, Iowa Department of Corrections, 510 East 12th Street, Des Moines, Iowa 50319; fax (515) 725-5799.

A public hearing will be held on May 2, 2006, from 11 a.m. to 1 p.m. at 510 East 12th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any persons who will attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Corrections and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 692A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subparagraph **38.4(3)“a”(2)** as follows:

(2) The psychosexual assessment shall include:

- Tests of emotional and mental stability.
- I.Q. to measure capability.
- Measure of denial of deviant sexual characteristics.
- ~~Polygraphy by July 1, 1999.~~
- Plethysmography (optional).

ITEM 2. Amend paragraph **38.4(5)“b”** as follows:

b. All institutional or community-based corrections SOTP programs shall meet *the* Iowa board for the treatment of sexual abusers (IBTSA) standards ~~by July 1, 1999 dated December 2005.~~

ARC 5041B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 22, “Controlling Pollution,” and Chapter 23, “Emission Standards for Contaminants,” Iowa Administrative Code.

The purpose of the proposed amendments is to adopt into the state air quality rules several federal regulations that were finalized over the last year. The proposed amendments also include one clarification to state air quality rules for construction permit exemptions.

Item 1 amends paragraph 22.1(1)“b,” which contains the requirements for a new or reconstructed major source of hazardous air pollutants to obtain a construction permit. A reference to the Code of Federal Regulations (CFR) is updated to reflect the most current amendment date for the applicable part. On April 22, 2004, the U.S. Environmental Protection Agency (EPA) amended 40 CFR 63.2 to add definitions for “pollution prevention” and “source at a Performance Track member facility.” EPA did not change the federal definition of “major source” contained in 40 CFR 63.2 and cited in 22.1(1)“b.”

Item 2 amends subparagraph 22.1(2)“x”(5) to clarify that this exemption from construction permitting includes only laundry activities located at a stationary source that uses washers and dryers to clean, with water solutions of bleach or detergents, or dry clothing, bedding, and other fabric items used on site.

Item 3 amends subrule 22.4(1) to reflect the EPA’s November 9, 2005, amendments to 40 CFR Part 51, Appendix W, Guideline on Air Quality Models. The most substantive change in the EPA amendments was the promulgation of American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) as the preferred guideline model. AERMOD replaces the Industrial Source Complex (ISC3) model. Since EPA did not require states to fully implement AERMOD until one year from federal promulgation, the amendment to 22.4(1) will not become effective until November 9, 2006. During the transition period, the Department will accept modeling conducted with either ISC3 or AERMOD.

Item 4 amends 567—22.100(455B) to add the definition of “area source” to the Title V program definitions. This term refers to nonmajor sources of hazardous air pollutants. This definition of “area source” is consistent with the federal definitions contained in Section 112 of the Clean Air Act and in 40 CFR 63.2.

Item 5 amends rule 567—22.100(455B) to delete the chemical “methyl ethyl ketone” from the list of air pollutants listed under the “hazardous air pollutant” definition in the Title V program rules. On December 19, 2005, EPA removed methyl ethyl ketone from the list of hazardous air pollutants contained in Section 112 of the Clean Air Act. The

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federal amendments were promulgated in 40 CFR Parts 63, 70 and 71.

Item 6 amends subrule 22.101(1) to better organize the provisions that specify which sources are required to obtain Title V operating permits. The Department did not make any substantive changes to this subrule.

Item 7 rescinds subrule 22.101(2) and adopts a new subrule to add clarity to the requirements for nonmajor (area) sources to obtain a Title V operating permit. The Department did not make substantive changes to the requirements.

Item 8 rescinds subrule 22.101(3) to remove the provisions for Title V exempt sources that elect to apply for a Title V operating permit. On December 19, 2005, EPA deleted these provisions from 40 CFR 70.3(b)(3).

Item 9 rescinds rule 567—22.102(455B) and adopts a new rule to list source categories that are exempt from the requirement to obtain a Title V operating permit. On December 19, 2005, EPA promulgated amendments to 40 CFR Parts 63 and 70 to permanently exempt five categories of nonmajor (area) sources that are subject to national emissions standards for hazardous air pollutants (NESHAP). The five area source categories that are now exempt from the requirements to obtain a Title V operating permit are dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide sterilizers, and secondary aluminum smelters. On October 21, 2002, EPA exempted from Title V the area sources that are subject to the NESHAP for publicly owned treatment works (40 CFR Part 63, Subpart VVV). New rule 567—22.102(455) includes this source category in the list of exemptions. Additionally, this new rule will add clarity to the state's Title V rules and will make provisions for source category exemptions more consistent with 40 CFR 70.3.

Item 10 amends subrule 22.105(2) to update a cross reference so that it is consistent with the amendments specified in Item 5.

Item 11 amends the introductory paragraph of subrule 23.1(2) for new source performance standards (commonly known as NSPS) to reflect the recent federal amendments to 40 CFR Part 60. EPA made a number of minor technical and administrative changes to the federal NSPS regulations. In addition, EPA amended the standards for steel plants (Subparts AA and AAa) on February 22, 2005, to add alternative requirements for monitoring emissions from furnace exhausts and to make minor editorial corrections.

EPA also amended the NSPS regulations in 40 CFR Part 60 for combustion turbines, for boilers used in electrical generating units, and for boilers in industrial, commercial, and institutional settings. With respect to boilers, EPA amended the emission limits for sulfur dioxide (SO₂), nitrogen oxides (NO_x) and particulate matter (PM) for electric utility boilers (Subpart Da), the SO₂ and PM emission limits for industrial-commercial-institutional (ICI) boilers (Subpart Db) and the SO₂ and PM emission limits for small ICI boilers (Subpart Dc). ICI boilers burning low-sulfur fuel can demonstrate compliance by certifying the fuels burned. With respect to combustion turbines, EPA amended the standards for NO_x to allow the turbine owner or operator the choice of a concentration-based or output-based emission standard. The NO_x limits differ based on the fuel input at peak load, fuel type, combustion turbine application, and location of the combustion turbine. The emissions standard for SO₂ is the same for all turbines, regardless of turbine size or fuel type.

Item 12 amends subrule 23.1(2) to adopt a new NSPS. On December 16, 2005, EPA finalized standards for Other Solid Waste Incineration (OSWI) units. This amendment adopts the standards for “new” OSWI units for which construction is

commenced after December 9, 2004, or for which modification or reconstruction is commenced on or after June 16, 2006 (Part 60, Subpart EEEE). The Department is not aware of any current or proposed facilities that would be potentially subject to the NSPS for “new” OSWI units.

On December 16, 2005, EPA also finalized emission guidelines for “existing” OSWI units for which construction commenced on or before December 9, 2004 (Part 60, Subpart FFFF). The Department is not proposing rules to adopt emission guidelines for existing OSWI units at this time. The Department will first determine if there are any facilities potentially subject to the federal emission guidelines. If necessary, the Department will propose rules for existing OSWI units at a later date.

Item 13 amends the introductory paragraph of subrule 23.1(4), which contains the NESHAP for source categories to reflect recent amendments to 40 CFR Part 63. From January 2005 through February 2006, EPA made numerous minor changes to 40 CFR Part 63, which included both technical and administrative updates and corrections.

The substantive changes to 40 CFR Part 63 include the following:

- EPA amended Subpart C to delete methyl ethyl ketone from the list of hazardous air pollutants.

- EPA amended Subparts M (dry cleaning facilities), N (chromium electroplating), O (ethylene oxide sterilizers), T (halogenated solvent cleaning) and RRR (secondary aluminum production) to specify that area sources subject to these subparts are not required to obtain a Title V operating permit.

- EPA amended the standards for Industrial, Commercial and Institutional Boilers and Process Heaters (Subpart DDDDD). EPA issued the amendments concurrently with a final response to petitions for reconsideration on the final rule. EPA elected to retain the health-based compliance alternatives to the final rule. EPA did make a limited number of amendments to clarify the process for demonstrating eligibility to comply with the health-based compliance alternatives contained in the final rule.

- EPA amended the standards for Refractory Products Manufacturing (Subpart SSSSS) for new and existing sources to clarify the testing, monitoring, start-up and shut-down requirements for batch processes, to make certain technical corrections, and to add recent changes to be consistent with the NESHAP general provisions.

- EPA amended the standards for Plywood and Composite Wood Products (Subpart DDDD). EPA issued the amendments to Subpart A (General Conditions), Subpart DDDD and Appendix B to Subpart DDDD (Methodology and Criteria for Demonstrating that an Affected Source is Part of a Low-Risk Subcategory of Plywood and Composite Wood Products) concurrently with a final response to petitions for reconsideration on the final rule. EPA amended all three of these sections to allow use of a new test method for measuring hazardous air pollutants. Further, EPA elected to retain and clarify the low-risk subcategory and low-risk demonstration (LRD) requirements contained in Appendix B, while making a number of amendments to clarify these requirements. In Subpart DDDD, EPA made further clarifications, including amendments to several of the definitions. The amendments to Subpart DDDD also revise the compliance deadline for the final rule to one year later than the deadline originally promulgated.

Item 14 amends paragraph 23.1(4) (“be,” the NESHAP for hazardous waste combustors, to reflect changes to the federal standards. On October 12, 2005, EPA promulgated amend-

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ments to 40 CFR Part 63, Subpart EEE. The amendments included adding hazardous waste solid fuel boilers, hazardous waste liquid fuel boilers and hazardous waste hydrochloric acid production furnaces to the list of source categories subject to this rule. EPA made additional, technical amendments to Subpart EEE on December 19, 2005. The Department is not aware of any facilities that are potentially subject to the NESHAP for hazardous waste combustors.

Any person may make written suggestions or comments on the proposed amendments on or before May 16, 2006. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322; fax (515) 242-5094; or by electronic mail to christine.paulson@dnr.state.ia.us.

A public hearing will be held on Friday, May 12, 2006, at 1 p.m. in the conference rooms at the Department's Air Quality Bureau located at 7900 Hickman Road, Urbandale, Iowa. Comments may be submitted orally or in writing at the public hearing. All comments must be received no later than May 16, 2006.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact Christine Paulson at (515)242-5154 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.133.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend paragraph **22.1(1)“b”** as follows:

b. New or reconstructed major sources of hazardous air pollutants. No person shall construct or reconstruct a major source of hazardous air pollutants, as defined in 40 CFR 63.2 and 40 CFR 63.41 as amended through April 5, 2002 April 22, 2004, unless a construction permit has been obtained from the department, which requires maximum achievable control technology for new sources to be applied. The permit shall be obtained prior to the initiation of construction or reconstruction of the major source.

ITEM 2. Amend subparagraph **22.1(2)“x”(5)** as follows:

(5) Laundry activities, ~~not including dry cleaning and steam boilers located at a stationary source that uses washers and dryers to clean, with water solutions of bleach or detergents, or to dry clothing, bedding, and other fabric items used on site. This exemption does not include laundry activities that use dry cleaning equipment or steam boilers.~~

ITEM 3. Amend subrule 22.4(1) as follows:

22.4(1) Federal rules 40 CFR 52.21(a) (Plan Disapproval), 52.21(q) (Public Participation), 52.21(s) (Environmental Impact Statement), and 52.21(u) (Delegation of Authority) are not adopted by reference. Also, for the purposes of 40 CFR 52.21(l), the department adopts by reference Appendix W to 40 CFR 51, Guideline on Air Quality Models (Revised), as adopted August 12, 1996 amended through November 9, 2005.

ITEM 4. Amend rule **567—22.100(455B)** by adopting the following **new** definition in alphabetical order:

“Area source” means any stationary source of hazardous air pollutants that is not a major source as defined in rule 567—22.100(455B).

ITEM 5. Amend rule **567—22.100(455B)**, definition of “hazardous air pollutant,” to delete the air pollutant “methyl ethyl ketone,” as follows:

“Hazardous air pollutant” means any of the following air pollutants listed in Section 112 of the Act:

cas #	chemical name
78933	Methyl ethyl ketone

ITEM 6. Amend subrule 22.101(1) as follows:

22.101(1) Except as provided in rule 22.102(455B), any person who owns or operates any of the following sources shall obtain a Title V operating permit:

a. Any affected source subject to the provisions of Title IV of the Act;

b. Any major source;

c. ~~Any source subject to a standard or other requirement under 567—subrule 23.1(2) (standards of performance for new stationary sources), 567—subrule 23.1(5) (emission guidelines), unless the source is specifically exempted, or Section 111 of the Act; or 567—subrule 23.1(3) (emissions standards for hazardous air pollutants), 567—subrule 23.1(4) (emission standards for hazardous air pollutants for source categories) or Section 112 of the Act. A source is not required to obtain a permit solely because it is subject to the provisions of Section 112(r) of the Act. Any source required to obtain a Title V operating permit solely because of the requirement imposed by this paragraph, and which is not a major source, is required to obtain a Title V permit only for the emissions units and related equipment causing the source to be subject to the Title V program Any source, including any nonmajor source, subject to a standard, limitation, or other requirement under Section 111 of the Act (567—subrule 23.1(2), new source performance standards; 567—subrule 23.1(5), emission guidelines);~~

d. ~~Any solid waste incinerator unit required to obtain a Title V permit under Section 129(e) of the Act Any source, including any area source, subject to a standard or other requirement under Section 112 of the Act (567—subrules 23.1(3) and 23.1(4), emission standards for hazardous air pollutants), except that a source is not required to obtain a Title V permit solely because it is subject to regulations or requirements under Section 112(r) of the Act;~~

e. ~~Any source category designated by the administrator pursuant to 40 CFR 70.3 as amended through June 20, 1996. Any solid waste incinerator unit required to obtain a Title V permit under Section 129(e) of the Act;~~

f. ~~Any source category designated by the Administrator pursuant to 40 CFR 70.3 as amended through December 19, 2005.~~

ITEM 7. Rescind subrule 22.101(2) and adopt the following **new** subrule in lieu thereof:

22.101(2) Any nonmajor source required to obtain a Title V operating permit pursuant to subrule 22.101(1) is required to obtain a Title V permit only for the emissions units and related equipment causing the source to be subject to the Title V program.

ITEM 8. Rescind subrule **22.101(3)**.

ITEM 9. Rescind rule 567—22.102(455B) and adopt the following **new** rule in lieu thereof:

567—22.102(455B) Source category exemptions.

22.102(1) All sources listed in subrule 22.101(1) that are not major sources, affected sources subject to the provisions of Title IV of the Act or solid waste incineration units required to obtain a permit pursuant to Section 129(e) of the Act are exempt from the obligation to obtain a Title V permit

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until such time as the Administrator completes a rule making to determine how the program should be structured for non-major sources and the appropriateness of any permanent exemptions in addition to those provided for in subrule 22.102(3).

22.102(2) In the case of nonmajor sources subject to a standard or other requirement under either Section 111 or Section 112 of the Act after July 21, 1992, publication, the Administrator will determine at the time the new or amended standard is promulgated whether to exempt any or all such applicable sources from the requirement to obtain a Title V permit.

22.102(3) The following source categories are exempt from the obligation to obtain a Title V permit:

a. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters, as amended through December 14, 2000;

b. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to 40 CFR 61, Subpart M, National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation, as amended through July 20, 2004;

c. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to any of the following subparts from 40 CFR 63:

(1) Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as amended through December 19, 2005.

(2) Subpart N, National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, as amended through December 19, 2005.

(3) Subpart O, Ethylene Oxide Emissions Standards for Sterilization Facilities, as amended through December 19, 2005.

(4) Subpart T, National Emission Standards for Halogenated Solvent Cleaning, as amended through December 19, 2005.

(5) Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production, as amended through December 19, 2005.

(6) Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works, as amended through June 23, 2003.

ITEM 10. Amend subrule 22.105(2), introductory paragraph, as follows:

22.105(2) Standard application form and required information. To apply for a Title V permit, applicants shall complete the standard permit application form available only from the department of natural resources, and supply all information required by the filing instructions found on that form. The information submitted must be sufficient to evaluate the source and its application and to determine all applicable requirements and to evaluate the fee amount required by rule 22.106(455B). If a source is not a major source and is applying for a Title V operating permit solely because of a requirement imposed by ~~paragraph 22.101(4)“c,” paragraphs 22.101(2)“c” and “d,”~~ then the information provided in the operating permit application may cover only the emissions units that trigger Title V applicability. The applicant shall submit the information called for by the application form for each emissions unit to be permitted, except for activities which are insignificant according to the provisions of

rule 22.103(455B). The applicant shall provide a list of all insignificant activities and specify the basis for the determination of insignificance for each activity. Nationally standardized forms shall be used for the acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act. The standard application form and any attachments shall require that the following information be provided:

ITEM 11. Amend subrule 23.1(2), introductory paragraph, as follows:

23.1(2) New source performance standards. The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through ~~July 14, 2004~~ *February 27, 2006*, are adopted by reference, except § 60.530 through § 60.539b (Part 60, Subpart AAA), and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

ITEM 12. Amend subrule **23.1(2)** by adopting the following ~~new~~ paragraph “**www**”:

www. Other solid waste incineration (OSWI) units. Unless exempted, this standard applies to other solid waste incineration (OSWI) units for which construction is commenced after December 9, 2004, or for which modification or reconstruction is commenced on or after June 16, 2006. (Part 60, Subpart EEEE)

ITEM 13. Amend subrule 23.1(4), introductory paragraph, as follows:

23.1(4) Emission standards for hazardous air pollutants for source categories. The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through ~~January 10, 2005~~ *February 16, 2006*, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purpose of this subrule, “hazardous air pollutant” has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4)“a,” general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

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ITEM 14. Amend paragraph **23.1(4)“be”** as follows:

be. Emission standards for hazardous air pollutants from hazardous waste combustors. These standards apply to all hazardous waste combustors: hazardous waste incinerators, hazardous waste burning cement kilns, and hazardous waste burning lightweight aggregate kilns, *hazardous waste solid fuel boilers, hazardous waste liquid fuel boilers, and hazardous waste hydrochloric acid production furnaces*, except as ~~provided in the rule specified in Subpart EEE.~~ Both area sources and major sources are subject to this subpart as of April 19, 1996, and are subject to the requirement to apply for and obtain a Title V permit. (Part 63, Subpart EEE, *as amended through December 19, 2005*)

ARC 5042B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.172(5), the Environmental Protection Commission gives Notice of Intended Action to rescind Chapter 68, “Commercial Septic Tank Cleaners,” and adopt a new Chapter 68 with the same title, and to amend Chapter 69, “Onsite Wastewater Treatment and Disposal Systems,” Iowa Administrative Code.

Proposed Chapter 68 would:

- Add and modify definitions.
- Require the submission of an annual waste management plan.
- Increase fees from \$25 per year to an average of \$500 per year based primarily upon volume of waste pumped.
- Require inspections for pump trucks and land disposal sites and grant the authority to contract with counties to do the inspections.
- Require that portable toilet waste be taken only to a public wastewater treatment plant.
- Clarify land spreading requirements for septage.
- Increase the fines assessed for violation of the rules from \$25 to \$250 per day.

Proposed amendments to Chapter 69 delete any repetition of sections of Chapter 68.

These chapters and their amendments were reviewed by the DNR Water Supply Section engineers, licensed septic tank pumping contractors, and county sanitarians.

Any interested person may make written suggestions or comments on the proposed amendments prior to May 17, 2006. Such written materials should be directed to Brent Parker, Wastewater Operations Section, Department of Natural Resources, 401 SW 7th Street, Suite M, Des Moines, Iowa 50319-4611; fax (515)725-0348. Persons who wish to convey their views orally should contact the Wastewater Operations Section at (515)725-0337 or at the Water Supply Operations Office, 401 SW 7th Street, Des Moines, Iowa 50309-4611.

Interested persons are also invited to present oral or written comments at public hearings which will be held at the following locations:

- | | |
|-------------------------|---|
| May 3, 2006
1 p.m. | IDNR, Water Supply Section
401 SW 7th Street
Suite I Conference Rooms
Des Moines, Iowa |
| May 4, 2006
10 a.m. | North Iowa Area Community College
500 College Drive
PapaJohn Center, Room 224
Mason City, Iowa |
| May 9, 2006
1 p.m. | Atlantic Public Library
507 Poplar Street, Meeting Room
Atlantic, Iowa |
| May 10, 2006
10 a.m. | Arrowhead Area Education Agency
824 Flindt Drive
Suite C, Room 606
Storm Lake, Iowa |
| May 11, 2006
10 a.m. | Delaware County Fairgrounds
200 East Acers Street
Manchester, Iowa |
| May 16, 2006
10 a.m. | Washington Public Library
120 East Main
Washington, Iowa |

Any person who intends to attend a public hearing and has special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

Copies of relevant rules may be obtained from Tricia Snyder, Records Center, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034.

These amendments may have an impact on small business.

These amendments are intended to implement Iowa Code section 455B.172.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Rescind 567—Chapter 68 and adopt the following **new** chapter in lieu thereof:

CHAPTER 68**COMMERCIAL SEPTIC TANK CLEANERS**

567—68.1(455B) Purpose and applicability. The purpose of this chapter is to implement Iowa Code subsection 455B.172(5) by providing standards for the commercial cleaning of and the disposal of waste from private sewage disposal systems and licensing requirements and procedures. These rules govern the commercial cleaning of and the disposal of wastes from private sewage disposal systems.

567—68.2(455B) Definitions. For purposes of this chapter, the following terms shall have the meanings indicated:

“Cleaning” means removal of waste from private sewage disposal systems and other actions incidental to that removal.

“Commercial septic tank cleaner” means a person or firm engaged in the business of cleaning and disposing of waste from private sewage disposal systems, including a person or firm that owns and rents or leases portable toilets.

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“Department” means the Iowa department of natural resources.

“Holding tank for wastes” means any receptacle for the retention or storage of wastes pending removal for further treatment or disposal.

“Private sewage disposal systems” means a system which provides for the treatment or disposal of domestic sewage from four or fewer dwelling units or the equivalent of fewer than 16 individuals on a continuing basis. “Private sewage disposal systems” includes, but is not limited to, septic tanks as defined in 567—subrule 69.1(2); holding tanks for wastes; and impervious vault toilets, portable toilets, and chemical toilets as described in 567—69.15(455B).

“Septage” means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or from a holding tank, when the system is cleaned or maintained.

“Tank” means any container which is placed on a vehicle to transport waste removed from a private waste facility.

“Toilet unit” means a portable or fixed tank or vessel holding untreated human waste without secondary wastewater treatment which is emptied for disposal. “Toilet unit” does not include a portable or fixed tank or vessel holding untreated human waste that is part of a recreational vehicle or marine vessel.

“Vehicle” means a device used to transport a tank, including a trailer.

“Waste” means human or animal excreta, water, scum, sludge, septage, and grease solids from private sewage disposal.

567—68.3(455B) Licensing requirements. Commercial septic tank cleaners must annually apply for and obtain a license from the department before engaging in the commercial cleaning of and disposal of waste from any private sewage disposal system in the state of Iowa. The license period will run from July 1 to June 30 of the following year. The owner of a septic tank may clean the owner’s own tank without being licensed if all other requirements of this chapter are met.

567—68.4(455B) Licensing procedures.

68.4(1) Application for license. A commercial septic tank cleaner must apply for a license by completing a form provided by the department and submitting it with an annual waste management plan and the license fee to the Department of Natural Resources, License Bureau, Wallace Building, 502 E. 9th Street, Des Moines, Iowa 50319. In the case of a commercial septic tank cleaner which is a corporation, partnership, association or any other business entity, the entity itself must apply as provided in this rule. The entity shall designate one person, such as a partner, officer, manager, supervisor, or other full-time employee, to act as its representative for the purpose of applying for a license. Individuals employed by a commercial septic tank cleaner business are not required to be licensed, but each cleaning unit (vehicle or tank) must have the license number (except for the year) displayed and a copy of the current license with the cleaning unit.

68.4(2) Waste management plan. The applicant must submit as a part of the application a septage disposal management plan. The plan must also be submitted to the county board of health in each county where septage is to be land-applied. The plan shall include:

a. The volume of septage expected to be collected from private sewage disposal facilities.

b. The volume of septage to be taken to permitted publicly owned treatment works.

c. A letter of acceptance from any publicly operated treatment works where waste is proposed to be disposed.

d. The location and area of all sites where septage is to be land-applied.

e. The anticipated volume of septage applied to each site.

f. The type of crop to be planted on each site and when the crop is to be planted.

g. The type of application to be used at each site.

h. A list of vehicles to be registered.

i. The previous year’s record of disposal as required in subrule 68.6(3) and subparagraph 68.10(2)“c”(4).

Allowance may be made in the plan for septage application on the property of the owner of the tank being pumped as long as disposal standards of this chapter are met. A license will be issued only after approval of the waste management plan. If the plan is not approved, it must be modified and re-submitted.

68.4(3) License fee. The initial license application and each renewal application must be accompanied by a nonrefundable fee in the form of a check or money order made payable to the Department of Natural Resources. The application fee is \$150 per year for the first registered vehicle and \$50 for each additional vehicle. If the applicant intends to land-apply any septage during the year, there will be an additional application fee of \$7 per 1,000 gallons of waste to be land-applied per year. Land application fees shall be based on the previous year’s records. First-time applicants shall pay a \$300 annual land application fee if they propose to land-apply. New license applicants will be charged monthly prorated fees until the next June 30.

68.4(4) License renewal. In order to remain valid, a commercial septic tank cleaner license must be renewed by June 30 of each year. Renewal application must be made on a form provided by the department, and must be received by the department or postmarked at least 30 days prior to the expiration date. The renewal application form must be accompanied by the license fee specified in subrule 68.4(2), a copy of all waste disposal records as defined in 68.6(3) for the previous year, and a revised waste management plan.

68.4(5) Change in ownership. Within 30 days of the change in ownership of any commercial septic tank cleaner, the new owner shall furnish the department with the following information:

a. Name of business and license number;

b. Name, address, and telephone number of new owner; and

c. Date the change in ownership took place and any change in the waste management plan. The license will transfer with the ownership with no additional fee due until the next renewal date.

68.4(6) Change in address. Within 30 days of any change in the address or location of the business, information regarding such change must be reported to the department.

68.4(7) Alteration of waste management plan. An amended waste management plan must be submitted before any new property for land application not listed on the existing plan is used or waste is taken to a publicly operated treatment works not listed on the plan.

567—68.5(455B) Suspension, revocation and denial of license.

68.5(1) Basis for suspension, revocation, and denial. The department may suspend, revoke, or deny a commercial septic tank cleaner license for any of the following reasons:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

- a. A material misstatement of facts in a license application.
- b. Failure to provide the adequate license fee.
- c. Failure to provide and adhere to an approved waste management plan.
- d. Failure to satisfy the obligations of a commercial septic tank cleaner and the standards as provided in rules 68.6(455B), 68.9(455B), and 68.10(455B).
- e. Failure to pay any fines assessed under 68.5(2).

68.5(2) Civil penalties. The department may assess civil penalties not to exceed \$250 for violations of this rule. Each day that the violation continues constitutes a separate offense.

68.5(3) Appeal. A commercial septic tank cleaner may appeal the suspension, revocation, or denial of a license under the provisions of 567—Chapter 7.

68.5(4) Reinstatement. In the case of a denial, revocation, or suspension pursuant to paragraph 68.5(1)“b” or “e,” the department may immediately reinstate or issue a license after receipt of the requisite fee or fine or confirmation that the commercial septic tank cleaner is fulfilling the requirements of rules 68.6(455B) and 68.9(455B). In case of a denial, revocation or suspension pursuant to paragraph 68.5(1)“a,” “c,” or “d,” the department may reinstate or issue a license no sooner than 60 days after the denial, revocation, or suspension if the department is satisfied that the commercial septic tank cleaner has corrected the deficiency and will comply with departmental rules in the future.

567—68.6(455B) Licensee’s obligations.

68.6(1) Supervision. The licensee shall provide supervision for the removal and disposal of waste from private sewage disposal systems.

68.6(2) Standards. The licensee shall meet the standards established in this chapter for the cleaning of and disposal of waste from private sewage disposal systems.

68.6(3) Records. The licensee shall maintain records of private sewage disposal systems cleaned and the location, method of waste disposal, and volume of waste disposed for each trip. Such records shall be maintained for a period of five years, and shall be made readily available upon request to county board of health or department officials and submitted with the waste management plan.

567—68.7(455B) County obligations. The county boards of health shall enforce the standards and licensing requirements contained in this chapter and other referenced rules relating to the cleaning of private sewage disposal systems and disposal of waste from such facilities.

567—68.8(455B) Application sites and equipment inspections. All application sites specified on the waste management plan shall be inspected annually by an agent approved by the department to ensure that the sites meet the requirements for septage disposal and are properly managed. All tank trucks and related storage and handling facilities for septage shall be inspected annually to ensure compliance with these rules. The department may contract with other entities such as the local county health department to carry out the inspections. However, the department shall retain concurrent authority to determine inspection requirements.

567—68.9(455B) Standards for commercial cleaning of private sewage disposal systems.

68.9(1) Vehicles, tanks and equipment. For all vehicles, tanks, and equipment used in the commercial cleaning of private sewage disposal systems, the licensee shall:

- a. Prevent the dripping, falling, spilling, leaking, or discharging of waste onto roads, rights-of-way or other public properties.
- b. Provide the equipment necessary for proper cleaning of private sewage disposal systems.
- c. Ensure proper construction and repair of cleaning equipment to allow easy cleaning and maintaining in an essentially rust-free and sanitary condition and appearance.
- d. If septage is to be land-applied, provide a mechanism for properly mixing lime with the septage or a means to incorporate or inject the septage.

68.9(2) Septic tank cleaning. Tanks shall be emptied of all waste. Sludge may be loosened by pumping liquid back into the tank or adding dilution water. The tank does not have to be washed out with fresh water; however, no more than four inches of waste shall be left in the bottom.

68.9(3) Miscellaneous.

a. Any tanks or equipment used for hauling waste from private sewage disposal systems shall not be used for hauling hazardous or toxic wastes as defined in 567—Chapter 131 or other wastes detrimental to land application or wastewater treatment plants, and shall not be used in a manner that would contaminate a potable water supply or endanger the food chain or public health.

b. Pumps and associated piping shall be installed with watertight connections to prevent leakage.

c. Agitation capability for use in cleaning private sewage disposal systems to disperse sludge and scum into the liquid for proper cleaning shall be provided.

d. All vehicles shall display the license number (except for the year) assigned to the commercial septic tank cleaner with three-inch or larger letters and numbers on the side of the tank or vehicle.

e. The name and address of the license holder shall be prominently displayed on the side of the tank or vehicle in letters at least three inches high.

f. A direct connection shall not be made between a potable water source and the tank or equipment on the vehicle.

567—68.10(455B) Standards for disposal. Disposal of wastes from private sewage disposal systems shall be carried out in accordance with the rules established by the department.

68.10(1) Waste from toilet units shall be disposed of by discharge to a publicly owned treatment works or other permitted wastewater treatment system with the treatment works owner’s approval.

68.10(2) Septage from septic tanks or other types of private sewage disposal systems that normally discharge effluent for further treatment (such as mechanical/aerobic treatment tanks, siphon tanks or distribution boxes) shall be disposed of according to the following requirements:

a. Septage shall be discharged to a publicly owned treatment works or other permitted wastewater treatment system with the treatment works owner’s approval.

b. Septage shall be discharged to permitted septage lagoons or septage drying beds with the septage system owner’s approval.

c. Septage shall be land-applied in accordance with the following requirements:

(1) The maximum application rate is 30,000 gallons of septage per acre of cropland per 365-day period. The nitrogen application rate shall be no more than is utilized by the crop. A crop capable of using the nitrogen applied must be grown and harvested from the site after application of the maximum annual allocation or, at a minimum, every third year.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(2) The following site restrictions shall be met when septage is applied to land.

1. Septage shall not be applied to a lawn or a home garden.

2. Septage shall not be applied to land where there is a bedrock layer or seasonal high-water table within 3 feet of the soil surface. Determination of these confining layers may be ascertained by consulting the soil types noted in the county USDA soil surveys.

3. Land application sites shall have soil pH maintained above 6.0, unless crops prefer soils with lower pH conditions. If the soil pH is below 6.0, it is acceptable to use agricultural lime to increase the pH to an acceptable level. Soil pH shall be measured and reported as part of the annual waste management plan.

4. The septage shall not be applied to ground that has greater than 9 percent slope.

5. If application on frozen or snow-covered ground is necessary, it shall be limited to land areas of less than 5 percent slope and application rates of less than 5,000 gallons per acre per day.

6. Septage shall not be applied to land that is 35 feet or less from an open waterway. If septage is applied within 200 feet of a stream, lake, sinkhole or tile line surface intake located downgradient of the land application site, it shall be injected or applied to the surface and mechanically incorporated into the soil within 48 hours of application.

7. If the septage is applied to land subject to flooding more frequently than once in ten years, the septage shall be injected or shall be applied to the surface and mechanically incorporated into the soil within 48 hours. Information on which land is subject to flooding more frequently than once in ten years is available from the department.

8. Septage shall not be applied within 200 feet of an occupied residence nor within 500 feet of a well.

9. Crop harvesting restrictions:

- Food crops with harvested parts that touch the septage/soil mixture and are totally above ground shall not be harvested for 14 months after application of domestic septage.

- Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of domestic septage.

- Animal feed, fiber, and those food crops with harvested parts that do not touch the soil surface shall not be harvested for 30 days after application of the domestic septage. Animals shall not be allowed to graze on the land for 30 days after application of septage.

(3) One of the following vector attraction reduction requirements shall be met when septage is applied to land:

1. Septage shall be injected below the surface of the land. No significant amount of the septage shall be present on the land surface within one hour after the septage is injected.

2. Septage applied to the land surface shall be incorporated into the soil within six hours after application to or placement on the land.

3. The septage shall be stabilized by adding and thoroughly mixing sufficient alkaline material such as hydrated or quick lime to produce a mixture with a pH of 12. For example, adding and thoroughly mixing approximately 50 pounds of lime with each 1,000 gallons of septage is usually sufficient to bring the pH to 12 for 30 minutes. A minimum of 30 minutes of contact time shall be provided after mixing the lime with the septage prior to applying to land. Each container of septage shall be monitored for compliance by testing, using a pH meter or litmus paper, two representative samples of the batch of lime-treated domestic septage taken a

minimum of 30 minutes apart to verify that the pH remains at 12 or greater for the minimum 30-minute time period.

(4) When septage is applied to land, the person who applies the septage shall develop the following information and shall retain the information for five years and include it in the annually submitted waste management plan:

1. The location, by either street address or latitude and longitude, of each site on which septage is applied.

2. The number of acres and precise application area in each site on which septage is applied.

3. The gallons of waste applied each time.

4. The total gallons applied at each site to date for the year.

5. The date and time septage is applied to each site.

6. The rate, in gallons per acre, at which septage is applied to each site.

7. A description of how the vector attraction reduction requirements are met.

8. The following certification statement shall be provided with the records when the records are submitted to or requested by the department:

"I certify, under penalty of law, that the pathogen requirements and the vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

(5) Other methods of stabilization may be acceptable if shown to be equivalent to 68.10(2)"c"(3)"3" above.

d. Septage shall be discharged (with owner approval) to a permitted sanitary landfill in accordance with 567—Chapters 102 and 103 and the following requirements:

(1) Septage shall be stabilized by adding and thoroughly mixing sufficient lime to produce a mixture with a pH of 12.

(2) A minimum of 30 minutes of contact time shall be provided after mixing the lime with the septage prior to discharging to the landfill.

These rules are intended to implement Iowa Code section 455B.172.

ITEM 2. Amend rule 567—69.17(455B) as follows:

Amend the introductory paragraph as follows:

567—69.17(455B) Disposal of septage from on-site wastewater treatment and disposal systems.

69.17(1) The collection, storage, transportation and disposal of all septage shall be carried out in accordance with the requirements in 567—Chapter 68.

Rescind existing subrule **69.17(1)**.

ARC 5047B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, "Conditions of Eligibility," and Chapter 76, "Application and Investigation," Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments change Iowa Medicaid policy on eligibility for limited services available to certain aliens. Immigrants who do not qualify under Medicaid requirements for citizenship or alien status may qualify for three days' Medicaid coverage for treatment of an emergency medical condition. An "emergency medical condition" is defined as a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the patient's health, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. Covered conditions include labor and delivery.

Currently, eligibility for this coverage is based on a diagnosis code that is on a list published in the Department's Employees' Manual. Changes in medical terminology and practice make it difficult to keep this list updated. Medicaid eligibility is frequently denied because the code for the applicant's diagnosis is not listed. Many of these decisions are overturned on appeal because the applicant's medical condition meets the conditions for coverage set by the federal government and the Medicaid eligibility rules.

These amendments provide for verification of the presence of an emergent medical condition through a statement from the physician. This change will simplify administration of emergency medical coverage and result in fewer decisions being overturned on appeal.

These amendments also make a technical change to correct the form number for the review form used for women who are eligible for Medicaid family planning services only.

These amendments do not provide for waivers in specified situations because they remove a restriction on the people affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before May 3, 2006. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 249A.3.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 75.11(4) as follows:

75.11(4) Eligibility for payment of emergency medical services. Aliens who do not meet the provisions of subrule 75.11(2) and who would otherwise qualify except for their ~~alienage~~ *alien* status are eligible to receive Medicaid for *care and services necessary for the treatment of an emergency medical condition* as defined in subrule 75.11(1). To ~~qualify for payment under these provisions, this provision:~~

a. the The alien must meet all other eligibility criteria, including state residence requirements provided at rules 441—75.10(249A) and 441—75.53(249A). ~~However, the requirements of, with the exception of rule 441—75.7(249A) and subrules 75.11(2) and 75.11(3) do not apply to eligibility for aliens seeking the care and services necessary for the treatment of an emergency medical condition not related to an organ transplant procedure furnished on or after August 10, 1993.~~

b. The medical provider who treated the emergency medical condition or the provider's designee must submit verification of the existence of the emergency medical condition on either:

(1) Form 470-4299, Authorization to Obtain or Release Health Care Information Regarding Limited Emergency Services; or

(2) A signed statement that contains the same information as requested by Form 470-4299.

ITEM 2. Amend subrule **76.7(5)** by striking references to "Form 470-4091" and inserting "Form 470-4071" in lieu thereof.

ARC 5038B

NURSING BOARD[655]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby gives Notice of Intended Action to amend Chapter 11, "Examination of Public Records," Iowa Administrative Code.

This amendment updates subrules related to electronic processing of records. A flat fee is established for electronic files to allow clients to pay for rosters at the time of ordering.

Any interested person may make written comments or suggestions on or before May 2, 2006. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. Persons who wish to convey their views orally should contact the Executive Director at (515)281-3256, or in the Board office at 400 S.W. 8th Street, by appointment.

This amendment is intended to implement Iowa Code chapters 147, 152 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrules 11.5(1) to 11.5(3) and 11.5(5) as follows:

11.5(1) Roster information forms may be accessed via the board's Web site under "General Information" and "Rosters;" *or may be requested from the board office.*

11.5(2) ~~Upon receipt of a written request, the board shall send a form, to be signed by the purchaser, which denotes Completed forms may be returned to the board office by either electronic means or in hard copy and must include a signed Purchase of Roster Agreement form to ensure that the materials or publications shall not be published in any manner which could be construed by the public to mean that the board or any of its employees support, endorse, or approve the materials or publications to be disseminated.~~

11.5(3) *A fee of \$40 per data set shall be charged for a roster in electronic format, based on the hourly wage of the office employee processing the request. A fee shall be as-*

NURSING BOARD[655](cont'd)

essed the person requesting for a roster in hard copy format, based on the rate of charge set by the outside vendor and the hourly wage of the office employee producing the roster. The fee assessed shall be paid directly to the board and shall be considered a repayment receipt as defined in Iowa Code section 8.2. The roster shall not be released until payment or purchase order has been received.

11.5(5) State agencies that request a roster of Iowa licensees in hard copy format will be invoiced at cost as an electronic expenditure correction. *State agencies that request the roster in electronic format will be provided an electronic file of the roster at no cost.*

ARC 5030B**PHARMACY EXAMINERS
BOARD[657]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 124.301, 124B.11, and 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 2, “Pharmacist Licenses,” Chapter 3, “Pharmacy Technicians,” Chapter 8, “Universal Practice Standards,” Chapter 10, “Controlled Substances,” Chapter 12, “Precursor Substances,” and Chapter 17, “Wholesale Drug Licenses,” Iowa Administrative Code.

The amendments were approved at the March 7, 2006, regular meeting of the Board of Pharmacy Examiners.

The proposed amendments increase fees related to the issuance of new and renewed pharmacist licenses processed between July 1, 2006, and June 30, 2007, including examination, reexamination, and license transfer processing fees. The amendments also propose increasing fees related to the issuance of new and renewed pharmacy and wholesale drug licenses, new and renewed pharmacy technician and controlled substances registrations, and new and renewed precursor substances permits processed between July 1, 2006, and June 30, 2007.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on May 2, 2006. Such written materials should be sent to Terry Witkowski, Executive Officer, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code sections 124.301, 124B.11, 147.94, 155A.6, 155A.11, 155A.13, 155A.13A, 155A.14, and 155A.17.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 2.3(1) as follows:

2.3(1) Fees to the board. The biennial license fee shall be the fee established by rule 2.11(147,155A), including surcharge. The processing fee shall be \$40. For the period beginning July 1, 2005 2006, and ending June 30, 2006 2007, the processing fee shall be \$80. No refunds of the processing fee shall be made for cancellation or withdrawal of applications. The license fee and processing fee shall be payable to the Iowa Board of Pharmacy Examiners and may be remitted in the form of personal check, money order, or certified check. No refund of fees shall be made for failure to complete all licensure requirements within the period specified in subrule 2.1(2).

ITEM 2. Amend rule 657—2.6(147), unnumbered paragraph, as follows:

Each applicant for reexamination shall file an application on forms provided by the board. Processing fees of \$30 each will be charged to take NAPLEX or MPJE, Iowa Edition, and shall be paid to the board as provided in subrule 2.3(1). For the period beginning July 1, 2005 2006, and ending June 30, 2006 2007, the processing fee shall be \$40 each. In addition, candidates will be required to complete the appropriate examination registration application as provided in rule 2.2(155A) and to pay to NABP the registration and administration fees for each examination as provided in subrule 2.3(2). All applications, registration forms, and fees shall be submitted as provided in subrules 2.3(2) and 2.3(3).

ITEM 3. Amend subrule 2.9(4) as follows:

2.9(4) Fees. The fee for license transfer shall consist of the biennial license fee established by rule 2.11(147,155A) including surcharge and a processing fee of \$50. For the period beginning July 1, 2005 2006, and ending June 30, 2006 2007, the processing fee shall be \$100. No refunds of the processing fee shall be made for cancellation or withdrawal of an application. The license fee and processing fee shall be payable to the Iowa Board of Pharmacy Examiners and may be remitted in the form of personal check, money order, or certified check.

ITEM 4. Amend rule 657—2.11(147,155A), introductory paragraph, as follows:

657—2.11(147,155A) License expiration and renewal. A license to practice pharmacy shall expire on the second thirtieth day of June following the date of issuance of the license, with the exception that a new pharmacist license issued between April 1 and June 29 shall expire on the third thirtieth day of June following the date of issuance. The license renewal certificate shall be issued upon completion of the renewal application and timely payment of a \$100 fee plus applicable surcharge pursuant to 657—30.8(155A). For the period beginning July 1, 2005 2006, and ending June 30, 2006 2007, the license renewal certificate shall be issued upon completion of the renewal application and timely payment of a \$200 fee plus applicable surcharge pursuant to 657—30.8(155A).

ITEM 5. Amend subrule 3.10(1) as follows:

3.10(1) Initial fee. The fee for obtaining an initial registration shall be \$30 plus applicable surcharge pursuant to 657—30.8(155A). For the period beginning July 1, 2005 2006, and ending June 30, 2006 2007, the fee for initial registration shall be \$40 plus applicable surcharge pursuant to 657—30.8(155A).

ITEM 6. Amend subrule 3.10(2) as follows:

3.10(2) Renewal fee. The renewal fee for obtaining a biennial registration shall be \$30 plus applicable surcharge

PHARMACY EXAMINERS BOARD[657](cont'd)

pursuant to 657—30.8(155A). For the period beginning July 1, 2005 2006, and ending June 30, 2006 2007, the fee for biennial registration shall be \$40 plus applicable surcharge pursuant to 657—30.8(155A).

ITEM 7. Amend subrule 8.35(4), introductory paragraph, as follows:

8.35(4) License expiration and renewal. General pharmacy licenses, hospital pharmacy licenses, special or limited use pharmacy licenses, and nonresident pharmacy licenses shall be renewed before January 1 of each year. The fee for a new or renewal license shall be \$100. For the period beginning July 1, 2005 2006, and ending June 30, 2006 2007, the fee for a new or renewal license shall be \$150.

ITEM 8. Amend rule 657—10.3(124), introductory paragraph, as follows:

657—10.3(124) Registration and renewal. For each registration or timely renewal of a registration to manufacture, distribute, dispense, prescribe, import or export, conduct research or instructional activities, or conduct chemical analysis with controlled substances listed in Schedules I through V of Iowa Code chapter 124, registrants shall pay a biennial fee of \$50. For the period beginning July 1, 2005 2006, and ending June 30, 2006 2007, the fee for registration or timely renewal of a biennial registration shall be \$100.

ITEM 9. Amend subrule 12.7(2), paragraph “a,” as follows:

a. Initial and renewal fees. For each initial permit or timely renewed permit, an applicant shall pay a fee of \$100. For the period beginning July 1, 2005 2006, and ending June 30, 2006 2007, the fee for each initial permit or timely renewed permit shall be \$200.

ITEM 10. Amend subrule 17.3(2), introductory paragraph, as follows:

17.3(2) License expiration and renewal. A wholesale drug license shall be renewed before January 1 of each year. The fee for a new or renewal license shall be \$100. For the period beginning July 1, 2005 2006, and ending June 30, 2006 2007, the fee for a new or renewal license shall be \$300.

ARC 5029B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Mortuary Science Examiners hereby gives Notice of Intended Action to amend Chapter 99, “Administrative and Regulatory Authority for the Board of Mortuary Science Examiners,” Iowa Administrative Code.

The proposed amendment provides the Board the ability to retain licensure overpayments of less than \$10 to reduce program administrative costs.

Any interested person may make written comments on the proposed amendment no later than May 2, 2006, addressed to

Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on May 2, 2006, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 156 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Amend **645—99.1(17A)** by adding the following **new** definition in alphabetical order:

“Overpayment” means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

ARC 5023B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Mortuary Science Examiners hereby gives Notice of Intended Action to amend Chapter 101, “Licensure of Funeral Directors,” and Chapter 102, “Continuing Education for Funeral Directors,” Iowa Administrative Code.

The proposed amendments require taking either a one-semester hour course in Iowa law and rules or continuing education rather than an examination for an initial license, license renewal, license by endorsement and license reactivation starting July 1, 2007.

Any interested person may make written comments on the proposed amendments no later than May 2, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on May 2, 2006, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 156 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **101.3(1)** by adopting **new** paragraph "**c**" as follows:

c. Prior to July 1, 2007, an examination covering the Iowa law and rules for mortuary science with a score of at least 75 percent, or at least one semester-hour college course or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to the practice of mortuary science board law and rules, cremation, vital statistics, cemeteries and preneed. Beginning July 1, 2007, at least one semester-hour college course or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to the practice of mortuary science board law and rules, cremation, vital statistics, cemeteries and preneed.

ITEM 2. Amend subrule **101.3(2)** by adopting **new** paragraph "**d**" as follows:

d. Prior to July 1, 2007, successfully pass an examination covering the Iowa law and rules for mortuary science with a score of at least 75 percent or at least one semester-hour college course or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to the practice of mortuary science board law and rules, cremation, vital statistics, cemeteries and preneed. Beginning July 1, 2007, successfully complete at least one semester-hour college course or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to the practice of mortuary science board law and rules, cremation, vital statistics, cemeteries and preneed.

ITEM 3. Rescind subrule 101.8(6) and adopt the following **new** subrule in lieu thereof:

101.8(6) Prior to July 1, 2007, successfully passes an examination covering the Iowa law and rules for mortuary science with a score of at least 75 percent or at least one semester-hour college course or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to the practice of mortuary science board law and rules, cremation, vital statistics, cemeteries and preneed. Beginning July 1, 2007, an applicant must complete at least one semester-hour college course or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to the practice of mortuary science board law and rules, cremation, vital statistics, cemeteries and preneed.

ITEM 4. Amend subrule 101.10(2) as follows:

101.10(2) An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal date two years later. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The licensee will be required to complete a minimum of 24 hours of continuing education per biennium for each subsequent license renewal. *Effective July 1, 2007, 2 of the 24 hours of continuing education shall be in current Iowa law and rules.*

ITEM 5. Rescind paragraph **101.18(3)"a,"** subparagraph (3), and adopt the following **new** subparagraph (3) in lieu thereof:

(3) Prior to July 1, 2007, verification of successful passage of an examination covering the Iowa law and rules for mortuary science with a score of at least 75 percent or at least one semester-hour college course or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to the practice of mortuary science board law and rules, cremation, vital statistics, cemeteries and preneed. Beginning July 1, 2007, verification of completion of at least one semester-hour college course or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to the practice of mortuary science board law and rules, cremation, vital statistics, cemeteries and preneed.

ITEM 6. Rescind paragraph **101.18(3)"b,"** subparagraph (3), and adopt the following **new** subparagraph (3) in lieu thereof:

(3) Prior to July 1, 2007, verification of successful passage of an examination covering the Iowa law and rules for mortuary science with a score of at least 75 percent or at least one semester-hour college course or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to the practice of mortuary science board law and rules, cremation, vital statistics, cemeteries and preneed. Beginning July 1, 2007, verification of completion of at least one semester-hour college course or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to the practice of mortuary science board law and rules, cremation, vital statistics, cemeteries and preneed.

ITEM 7. Amend subrule 102.2(1) as follows:

102.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on the fifteenth day of the licensee's birth month and ending on the fifteenth day of the licensee's birth month. Each biennium, each person who is licensed to practice as a licensee in this state shall be required to complete a minimum of 24 hours of continuing education approved by the board. *Effective July 1, 2007, 2 of the 24 hours of continuing education shall be in current Iowa law and rules.*

ITEM 8. Adopt **new** subrule **102.3(2)**, paragraph "**f**," as follows:

f. Effective July 1, 2007, 2 of the 24 hours of continuing education shall be in current Iowa law and rules.

ARC 5025B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Speech Pathology and Audiology Examiners hereby gives Notice of Intended Action to amend Chapter 299, "Administrative and Regulatory Authority for the Board of

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Speech Pathology and Audiology Examiners," Iowa Administrative Code.

The proposed amendment provides the Board the ability to retain licensure overpayments of less than \$10 to reduce program administrative costs.

Any interested person may make written comments on the proposed amendment no later than May 2, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on May 2, 2006, from 10:30 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule **645—299.1(17A,147)** by adding the following **new** definition in alphabetical order:

"Overpayment" means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

ARC 5027B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Athletic Training Examiners hereby gives Notice of Intended Action to amend Chapter 350, "Administrative and Regulatory Authority for the Board of Athletic Training Examiners," Iowa Administrative Code.

The proposed amendment provides the Board the ability to retain licensure overpayments of less than \$10 to reduce program administrative costs.

Any interested person may make written comments on the proposed amendment no later than May 2, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on May 2, 2006, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 148A and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule **645—350.1(17A)** by adding the following **new** definition in alphabetical order:

"Overpayment" means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

ARC 5040B**TRANSPORTATION
DEPARTMENT[761]****Notice of Intended Action**

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 605, "License Issuance," Iowa Administrative Code.

Subrule 605.25(2) is amended. The subrule currently allows a driver's license to be renewed earlier than 30 days before the license expiration date when good cause exists, but limits early renewal to no more than one year prior to the expiration date for everyone except active military personnel being deployed due to actual or potential military conflict. The amendment removes the one-year restriction and the exception for military personnel, thereby allowing the Department the discretion to renew the driver's license of any individual earlier than one year prior to the expiration date. The rule change is being made to accommodate early renewal for customers who will be traveling out of state and will not be present in the state of Iowa during the time currently allowed for driver's license renewal.

This amendment does not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning the proposed amendment or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed amendment, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: julie.fitzgerald@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than May 2, 2006.

TRANSPORTATION DEPARTMENT[761](cont'd)

A meeting to hear requested oral presentations is scheduled for Thursday, May 4, 2006, at 10 a.m. in the DOT conference room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

This amendment is intended to implement Iowa Code chapter 321.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)

281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

Proposed rule-making action:

Amend subrule 605.25(2) as follows:

605.25(2) A valid license may be renewed 30 days before the expiration date. If this is impractical, the department for good cause may renew a license earlier, ~~not to exceed one year prior to the expiration date.~~ ~~The department may allow renewal earlier than one year prior to the expiration date for active military personnel being deployed due to actual or potential military conflict.~~

ARC 5045B**AGRICULTURE AND LAND
STEWARDSHIP DEPARTMENT[21]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code sections 159.5(11) and 163.1, the Department of Agriculture and Land Stewardship hereby adopts amendments to Chapter 64, "Infectious and Contagious Diseases," Iowa Administrative Code.

The purpose of these amendments is to update animal exhibition requirements in Iowa to be used at county fairs, 4-H fairs or exhibitions, or similar exhibitions.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 1, 2006, as **ARC 4857B**. No comments were received. These amendments are identical to those published under Notice of Intended Action.

Pursuant to Iowa Code section 17A.5(2)"b"(2), these amendments became effective upon filing. This emergency filing is necessary to allow as much advance notice as possible to exhibitors and exhibition officials about applicable

exhibition requirements. Notice of the Department's intention to adopt the amendments by emergency filing was provided in the Notice of Intended Action.

No waiver provision is included in these amendments because an existing rule allows for waivers in appropriate cases. The waiver rule also applies to the rules amended in this filing.

These amendments are intended to implement Iowa Code chapter 163.

These amendments became effective March 23, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [64.34(2), 64.34(5)"b"] is being omitted. These amendments are identical to those published under Notice as **ARC 4857B**, IAB 2/1/06.

[Filed Emergency After Notice 3/23/06, effective 3/23/06]
[Published 4/12/06]

[For replacement pages for IAC, see IAC Supplement 4/12/06.]

ARC 5046B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 459.103 and 2005 Iowa Code Supplement section 459A.104, the Environmental Protection Commission hereby amends Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 14, 2005, as **ARC 4506B**. In addition, the amendments were simultaneously Adopted and Filed Emergency as **ARC 4507B**.

The amendments separate Chapter 65 into two divisions, one for confinement operations and one for open feedlots. In addition to creating a separate division for open feedlot regulations, minimum design standards for open feedlot manure and effluent control systems are specified.

Written comments were received by the Department. In addition, oral comments were heard by the Department at five public hearings held across the state.

As a result of the written and oral comments, further review of Chapter 65 and the need to clarify the rules, the following changes have been made to the amendments as they were set forth in the Notice of Intended Action:

- Rule 567—65.1(455B) is additionally amended by deleting the third definition of "adjacent" pertaining to open feedlots.

- Subrule 65.2(9), introductory paragraph, second sentence, is modified by removing the release exception for open feedlots.

- Paragraph 65.2(9)"a" is modified to provide that the local police department or the office of the sheriff of the affected county must be contacted only if the spill involves a public roadway and public safety could be threatened.

- Subparagraph 65.2(9)"c"(6) is revised by deleting the parenthetical example, "open feedlot retention basin."

- Rule 567—65.6(455B) is amended by rescinding subrule 65.6(12). This subrule described the five-year Iowa Plan for open feedlots and therefore should not be in Division I pertaining to confinement feeding operations. In addition, the plan expired March 22, 2006.

- In paragraph 65.10(10)"i," introductory paragraph, the reference to "open feedlot operation" is changed to "animal feeding operation."

- Rule 567—65.14(455B) is rescinded. This rule refers to well separation distances for open feedlot operations and has been moved to Division II.

- Rule 567—65.100(455B, 459, 459A) is amended by: deleting the words "25-year, 24-hour" in the definition of "AT system"; deleting the definition of "grassed waterway," which is no longer used; modifying the definition of "release" to include "process wastewater" and "manure"; and adding a definition for "stockpile."

- Subrule 65.101(4) is amended by deleting the last sentence which erroneously referred to alternative technology systems. This subrule is for environmental management systems which are not the same as alternative technology systems.

- Subrule 65.101(5) is amended by adding the word "known" in front of "sinkhole" to be consistent with other uses in Chapter 65. This subrule describes prohibited discharges.

- Subrule 65.101(6) is modified by adding paragraph "c" to address land application by CAFOs as provided in federal regulations.

- Subrule 65.101(8) regarding manure stockpiles is amended by deleting language at the beginning of the second sentence, "For an open feedlot operation that is not a CAFO." In paragraph "b," the reduced separation distances to designated areas when surrounded by permanent vegetation as provided in subparagraphs (1) and (2) have been deleted. Also, paragraph "b" is expanded to require permanent vegetation cover for areas of concentrated flow located downslope and within 200 feet of the stockpile. Paragraph "c" is modified by deleting "grassed waterways" and substituting language prohibiting stockpiles where "water ponds or has concentrated flow." Paragraph "d" which prohibited stockpiles located downgradient of any drainage tile line within 200 feet of the stockpile has been modified to read as follows:

"d. Stockpiles shall not be located within 200 feet of a drainage tile intake or known sinkhole unless the stockpile is located so that any runoff from the stockpile will not reach the intake or sinkhole."

- In paragraph 65.101(9)"a," language is modified to require that the local police department or the office of the sheriff of the affected county be contacted only if the spill involves a public roadway and public safety could be threatened. Department staff shall determine if law enforcement agencies need to be notified for all other releases.

- Subrule 65.103(3) is amended by deleting the last clause of the sentence: "unless the required corrective actions are taken prior to that time."

- Subrule 65.104(2), last sentence, is amended by changing the dates to correspond with federal requirements for when newly defined CAFOs must apply for NPDES permits. Specifically, the references to September 14, 2005, are changed to April 14, 2003, and the reference to February 13, 2006, is changed to July 31, 2007.

- Subrule 65.104(3) is amended by shortening the deadline by which an expanding CAFO must apply for an NPDES permit from 180 days to 90 days prior to the scheduled expansion.

- Subrule 65.104(9) is amended to state that NPDES permits shall include conditions required by federal regulation 40 CFR 122.41.

- Paragraph 65.104(9)"d" is amended by adding the word "minimum" so additional monitoring may be required for alternative technology systems if necessitated by the site or the design of the site.

- Subparagraph 65.104(9)"d"(2), numbered paragraph "1," is amended to more clearly state when quarterly monitoring samples must be taken and to indicate how to proceed when there is no tile line discharge to sample.

- Subparagraph 65.104(9)"e"(2), annual reports, is reorganized as paragraph "f" with a new catch phrase, annual reporting requirements for all CAFOs with systems other than AT systems. Paragraphs "f" and "g" are relettered as paragraphs "g" and "h," respectively.

- Subparagraph 65.104(10)"b"(1), last sentence, is revised by deleting the words "25-year, 24-hour" and adding the following at the end of the sentence: "that is designed and operated as required by statute, 567—subrule 62.4(12) and Division II of this chapter."

- Subrule 65.104(11) is amended by adding a sentence providing that federal requirements prevail if they are more stringent regarding a permit that is to be modified, suspended or revoked.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

- Subrule 65.105(1) is reworded to more closely match language used in Division I regarding when a construction permit is required. The requirement to apply for a construction permit for installation of a settled open feedlot effluent transfer piping system has been added to paragraph “a.”

- Subrule 65.105(7) is reworded to more clearly state that construction cannot start on the components of an open feedlot operation that are required to be approved by a construction permit. The need for a construction permit prior to installation of settled open feedlot effluent transfer piping is also included. The revision also requires the producer to contact the Department prior to starting construction on the parts of an open feedlot operation that are not required to have a construction permit.

- Subparagraphs 65.109(2)“c”(3), 65.109(2)“c”(7), 65.109(3)“a”(1), numbered paragraph “1,” and 65.109(3)“a”(2) are revised to remove the option of test pits for soils investigations for settled open feedlot effluent basins.

- Paragraph 65.110(1)“a” has been modified by deleting the words “25-year, 24-hour” and inserting the words “required by 65.101(2)“a,”” after the word “event.”

- Paragraph 65.110(6)“e” has been revised to more clearly state that spreaders may be required to maintain uniform flow of the settled open feedlot effluent across the width of the vegetative treatment area of a VIB/VTa treatment system.

- Subparagraph 65.110(6)“i”(3) is added so that locations with sand lenses are not prohibited from use of a VIB/VTa treatment system if a soils investigation shows the sand lenses are isolated and will not have an impact on groundwater.

- Paragraph 65.110(6)“l” is revised to more clearly define the water bodies for which separation distances apply to the discharge point from the VTA of a VIB/VTa treatment system.

- Paragraph 65.110(7)“e” is revised to more clearly state that spreaders may be required to maintain uniform flow of the settled open feedlot effluent across the width of the vegetative treatment area of a VTA treatment system.

- In paragraph 65.110(7)“i,” a statement is added so that locations with sand lenses are not prohibited from use of a VTA treatment system if a soils investigation shows the sand pockets are isolated and will not have an impact on groundwater.

- Paragraph 65.110(7)“l” is revised to more clearly define the water bodies for which separation distances apply to the discharge point from a VTA treatment system.

These amendments are intended to implement Iowa Code sections 455B.171 to 455B.191, 459.314, and 459.601 and 2005 Iowa Code Supplement chapter 459A.

These amendments will become effective on May 17, 2006, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend 567—Chapter 65 by adding the following **new** division title prior to rule 567—65.1(455B):

DIVISION I
CONFINEMENT FEEDING OPERATIONS

ITEM 2. Amend rule 567—65.1(455B), introductory paragraph, as follows:

567—65.1(455B) Definitions. In addition to the definitions in Iowa Code sections 455B.101 and 455B.171 and Iowa

Code section ~~455B.161~~ 459.102, the following definitions shall apply to *Division I* of this chapter:

ITEM 3. Amend rule ~~567—65.1(455B)~~ by rescinding the third definition of “adjacent,” and the definitions of “open feedlot,” “runoff control basin,” and “solids settling facility.”

ITEM 4. Amend rule 567—65.2(455B) by rescinding subrules **65.2(1)** and **65.2(2)**.

ITEM 5. Amend subrule 65.2(9), introductory paragraph, as follows:

65.2(9) A release, as defined in rule 65.1(455B), shall be reported to the department as provided in this subrule. This subrule does not apply to land application of manure in compliance with these rules, ~~or to precipitation or snowmelt-induced runoff from open feedlots which complies with the minimum control requirements of these rules.~~

ITEM 6. Rescind paragraph **65.2(9)“a”** and adopt the following **new** paragraph in lieu thereof:

a. Notification. A person storing, handling, transporting, or land-applying manure from a confinement feeding operation who becomes aware of a release shall notify the department of the occurrence of release as soon as possible but not later than six hours after the onset or discovery of the release by contacting the department at (515)281-8694. The local police department or the office of the sheriff of the affected county shall also be contacted within the same time period if the spill involves a public roadway and public safety could be threatened. Reports made pursuant to this rule shall be confirmed in writing as provided in 65.2(9)“c.”

ITEM 7. Amend subparagraph **65.2(9)“c”(6)** as follows:

(6) The source of the manure allegedly released (e.g., formed storage, earthen storage, ~~open feedlot retention basin~~).

ITEM 8. Rescind rule 567—65.4(455B) and adopt the following **new** rule in lieu thereof:

567—65.4(455B) Operation permit required. A confinement feeding operation shall apply for and obtain an operation permit if the department notifies the operation in writing that, in accordance with the departmental evaluation provisions of 65.5(2)“a,” application for an operation permit is required.

ITEM 9. Amend paragraph **65.5(2)“a”** as follows:

a. Apply for an operation permit if the operation receives a written notification from the department that it is required to apply for an operation permit. However, no operation with an animal capacity less than that specified in ~~subrule 65.4(2)~~ *the following subparagraphs* shall be required to apply for a permit unless manure from the operation is discharged into a water of the state through a man-made manure drainage system or is discharged into a water of the state which traverses the operation:

- (1) 300 beef cattle.
- (2) 200 dairy cattle.
- (3) 750 butcher and breeding swine (over 55 lbs.).
- (4) 3,000 sheep or lambs.
- (5) 16,500 turkeys.
- (6) 30,000 broiler or layer chickens.
- (7) 150 horses.
- (8) 300 animal units.

ITEM 10. Amend rule 567—65.6(455B) by rescinding subrule **65.6(12)**.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 11. Amend rule 567—65.9(455B) by rescinding subrule **65.9(2)**.

ITEM 12. Amend paragraph **65.10(10)“i,”** introductory paragraph, as follows:

i. When a person who is a department official, an agent of the department, or a person accompanying the department official or agent enters the premises of an ~~open feedlot~~ *animal feeding* operation, both of the following shall apply:

ITEM 13. Rescind and reserve rule **567—65.14(455B)**.

ITEM 14. Amend 567—Chapter 65 by adopting the following **new** division:

DIVISION II

OPEN FEEDLOT OPERATIONS

567—65.100(455B,459,459A) Definitions. In addition to the definitions in Iowa Code sections 455B.101 and 455B.171 and 2005 Iowa Code Supplement section 459A.102, the following definitions shall apply to Division II of this chapter:

“Abandoned” means an open feedlot operation structure that has been razed, removed from the site of an open feedlot operation, filled in with earth, or converted to uses other than an open feedlot operation structure so that it cannot be used as an open feedlot operation structure without significant reconstruction.

“Adjacent.” Two or more open feedlot operations are defined as adjacent if both of the following occur:

1. At least one open feedlot operation structure is constructed on or after July 17, 2002.

2. An open feedlot operation structure which is part of one open feedlot operation is separated by less than 1250 feet from an open feedlot operation structure which is part of the other open feedlot operation.

“Alternative technology settled open feedlot effluent control system” or “AT system” means use of an open feedlot effluent control technology other than a conventional runoff containment system to control and dispose of settled open feedlot effluent. The department may allow an open feedlot operation covered by the NPDES permit application requirements of 65.102(455B,459A) or 65.103(455B,459A) to use an AT system, provided the open feedlot operation satisfactorily demonstrates the AT system will provide an equivalent level of performance to that achieved by a runoff containment system that is designed and operated as required by statute, 567—subrule 62.4(12) and Division II of this chapter. Demonstration of equivalent performance must include submitting results of computer modeling which compares the predicted performance of the proposed system with that of a conventional runoff containment system over the same period. The specific requirements which must be met for an open feedlot operation to qualify for use of an AT system and the information which must be submitted to the department are outlined in rule 65.110(459A).

Design requirements have been established for two types of AT systems. These are a vegetative infiltration basin (VIB) followed by a vegetative treatment area (VTA) and a stand-alone vegetative treatment area (VTA). If other AT systems are developed that meet the equivalent performance standard established under EPA’s CAFO rules, the department will consider their acceptance on a case-by-case basis.

“Animal” means a species classified as cattle, swine, horses, sheep, chickens or turkeys.

“Animal capacity” means the maximum number of animals which the owner or operator will confine in an open feedlot operation at any one time.

“Animal feeding operation” or “AFO” means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structures used for the storage of manure from animals in the operation. An animal feeding operation does not include a livestock market.

Pursuant to federal regulations, a livestock market could satisfy the definitions of an AFO and a CAFO and thus be subject to NPDES permit requirements. In order to implement the federal NPDES permit program, the commission must adopt rules which are no less stringent than federal regulations. Therefore, for the purposes of the NPDES permit program, an AFO can include a livestock market.

“Animal unit” means a unit of measurement based upon the product of multiplying the number of animals of each category by a special equivalency factor, as follows:

1. Slaughter and feeder cattle	1.000
2. Immature dairy cattle	1.000
3. Mature dairy cattle	1.400
4. Butcher or breeding swine weighing more than 55 pounds	0.400
5. Swine weighing 15 pounds or more but not more than 55 pounds	0.100
6. Sheep or lambs	0.100
7. Horses	2.000
8. Turkeys weighing 112 ounces or more	0.018
9. Turkeys weighing less than 112 ounces	0.0085
10. Chickens weighing 48 ounces or more	0.010
11. Chickens weighing less than 48 ounces	0.0025

“Animal unit capacity” means a measurement used to determine the maximum number of animal units that may be maintained as part of an open feedlot operation.

“Common management” means significant control by a person of the management of the day-to-day operations of each of two or more open feedlot operations. “Common management” does not include control over a contract livestock facility by a contractor, as defined in Iowa Code section 202.1.

“Common ownership” means to hold an interest in each of two or more open feedlot operations as any of the following:

1. A sole proprietor.
2. A joint tenant or tenant in common.
3. A holder of a majority equity interest in a business association as defined in Iowa Code section 202B.102, including as a shareholder, partner, member, beneficiary, or other equity interest holder.

An interest in an open feedlot operation under “2” or “3” above is a common ownership interest when it is held directly or indirectly through a spouse or dependent child, or both.

“Concentrated animal feeding operation” or “CAFO” means an AFO that is defined as a large CAFO, a medium CAFO, or a designated CAFO.

“Deep well” means a well located and constructed in such a manner that there is a continuous layer of low permeability soil or rock at least 5 feet thick located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

“Designated area” means a known sinkhole, or a cistern, abandoned well, unplugged agricultural drainage well, agricultural drainage well surface tile inlet, drinking water well, designated wetland, lake, or water source. A designated area does not include a terrace tile inlet or surface tile inlet other than an agricultural drainage well surface tile inlet.

“Designated CAFO” means an AFO that has been designated as a CAFO pursuant to rule 65.103(455B,459A).

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"Discontinued open feedlot operation" means an open feedlot operation in which the open feedlot operation structures have been abandoned or the use of the open feedlot operation structures has been discontinued as evidenced by the removal of all animals, and the owner or operator has no immediate plans to repopulate the structures.

"Formed settled open feedlot effluent basin" means a settled open feedlot effluent basin which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials. Similar materials may include, but are not limited to, plastic, rubber, fiberglass, or other synthetic materials. Materials used in a formed settled open feedlot effluent basin shall have the structural integrity to withstand expected internal and external load pressures.

"Karst terrain" means land having karst formations that exhibit surface and subterranean features of a type produced by the dissolution of limestone, dolomite, or other soluble rock and characterized by closed depressions, sinkholes, losing streams, or caves. If a 25-foot vertical separation distance can be maintained between the bottom of an open feedlot operation structure and limestone, dolomite, or other soluble rock, then the structure is not considered to be in karst terrain. Assistance in identifying karst terrain or potential karst terrain may be obtained by referring to: http://csbweb.igsb.uiowa.edu/imsgate/maps/afo_siting_atlas.asp.

"Large concentrated animal feeding operation" or "large CAFO." An AFO is defined as a large CAFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:

1. 700 mature dairy cows, whether milked or dry;
2. 1,000 cattle, including but not limited to heifers, steers, bulls, veal calves and cow/calf pairs;
3. 2,500 swine each weighing 55 pounds or more;
4. 10,000 swine each weighing less than 55 pounds;
5. 500 horses;
6. 10,000 sheep or lambs;
7. 55,000 turkeys;
8. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
9. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
10. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
11. 1,000 animal units, where more than one category of animals is maintained using the same type of operation.

"Manure" means animal excreta or other commonly associated wastes of animals including, but not limited to, bedding, compost, litter, feed losses, raw materials or other materials commingled with manure or set aside for disposal.

"Medium concentrated animal feeding operation" or "medium CAFO." The term medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges listed in paragraph "a" of this definition and which has been defined or designated as a CAFO. An AFO is defined as a medium CAFO if:

- a. The type and number of animals that it stables or confines fall within any of the following ranges:
 - (1) 200 to 699 mature dairy cows, whether milked or dry;
 - (2) 300 to 999 cattle, including but not limited to heifers, steers, bulls, veal calves and cow/calf pairs;
 - (3) 750 to 2,499 swine each weighing 55 pounds or more;
 - (4) 3,000 to 9,999 swine each weighing less than 55 pounds;
 - (5) 150 to 499 horses;
 - (6) 3,000 to 9,999 sheep or lambs;
 - (7) 16,500 to 54,999 turkeys;

(8) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(9) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(10) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(11) 300 to 999 animal units, where more than one category of animals is maintained using the same type of operation; and

b. Either one of the following conditions is met:

(1) Manure or process wastewater is discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or

(2) Manure or process wastewater is discharged directly into waters of the United States which originate outside of and pass over, across or through the facility or otherwise come into direct contact with animals confined in the operation.

"NPDES permit" means a written permit of the department pursuant to the National Pollutant Discharge Elimination System (NPDES) program, to authorize and regulate the operation of a CAFO.

"Nutrient management plan" or "NMP" means a plan which provides for the management of manure, process wastewater, settled open feedlot effluent, settleable solids, open feedlot effluent, including the application of effluent, as provided in 65.112(459A).

"Open feedlot" means a lot, yard, corral, building, or other area used to house animals in conjunction with an open feedlot operation.

"Open feedlot effluent" means a combination of manure, precipitation-induced runoff, or other runoff from an open feedlot before its settleable solids have been removed.

"Open feedlot operation" means an unroofed or partially roofed animal feeding operation if crop, vegetation, or forage growth or residue is not maintained as part of the animal feeding operation during the period that animals are confined in the animal feeding operation.

2005 Iowa Code Supplement section 459A.103 provides that two or more open feedlot operations under common ownership or management are deemed to be a single open feedlot operation if they are adjacent or utilize a common area or system for open feedlot effluent disposal. To determine if two or more open feedlot operations are deemed to be one open feedlot operation, the first test is whether the open feedlot operations are under common ownership or management. If they are not under common ownership or management, they are not one open feedlot operation. The second test is whether the two open feedlot operations are adjacent or utilize a common area or system for open feedlot effluent disposal. If the two operations are not adjacent and do not use a common area or system for open feedlot effluent disposal, they are not one open feedlot operation.

"Open feedlot operation structure" means an open feedlot, settled open feedlot effluent basin, a solids settling facility, or an AT system. "Open feedlot operation structure" does not include a manure storage structure as defined in Iowa Code section 459.102.

"Owner" means the person who has title to the property where the animal feeding operation is located or the person who has title to the animal feeding operation structures. "Owner" does not include a person who has a lease to use the land where the animal feeding operation is located or to use the animal feeding operation structures.

"Permanent vegetation cover" means land which is maintained in perennial vegetation cover consisting of grasses,

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legumes, or both, and includes, but is not limited to, pastures, grasslands or forages.

“Process wastewater” means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

“Production area” means that part of an AFO that includes the area in which animals are confined, the manure storage area, the raw materials storage area, and the waste containment areas. The area in which animals are confined includes, but is not limited to, open lots, housed lots, feedlots, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes, but is not limited to, lagoons, solids settling facilities, settled open feedlot effluent basins, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes, but is not limited to, feed silos, silage bunkers, and bedding materials. The waste containment area includes, but is not limited to, settling basins and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any area used in the storage, handling, treatment, or disposal of mortalities.

“Professional engineer” means a person engaged in the practice of engineering as defined in Iowa Code section 542B.2 who is issued a certificate of licensure as a professional engineer pursuant to Iowa Code section 542B.17.

“Release” means an actual, imminent or probable discharge of process wastewater, manure, open feedlot effluent, settled open feedlot effluent, or settleable solids from an open feedlot operation structure to surface water, groundwater, or an actual, imminent or probable discharge directly to a drainage tile line or intake resulting from storing, handling, transporting or land-applying process wastewater, manure open feedlot effluent, settled open feedlot effluent or settleable solids.

“Settleable solids” means that portion of open feedlot effluent that meets all the following requirements:

1. The solids do not flow perceptibly under pressure.
2. The solids are not capable of being transported through a mechanical pumping device designed to move a liquid.
3. The constituent molecules of the solids do not flow freely among themselves but do show the tendency to separate under stress.

“Settled open feedlot effluent” means a combination of manure, precipitation-induced runoff, or other runoff originating from an open feedlot after its settleable solids have been removed.

“Settled open feedlot effluent basin” or “runoff control basin” means a covered or uncovered impoundment which is part of an open feedlot operation, if the primary function of the impoundment is to collect and store settled open feedlot effluent.

“Shallow well” means a well located and constructed in such a manner that there is not a continuous layer of low permeability soil or rock (or equivalent retarding mechanism acceptable to the department) at least 5 feet thick, the top of which is located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

“Solids settling facility” means a basin, terrace, diversion, or other structure or solids removal method which is part of an open feedlot operation and which is designed and operated to remove settleable solids from open feedlot effluent. A “solids settling facility” does not include a basin, terrace, diversion, or other structure or solids removal method which retains the liquid portion of open feedlot effluent for more than seven consecutive days following a precipitation event.

“Stockpile” means any accumulation of manure, scraped solids, settleable solids or combination of manure and solids located outside of the open feedlot, where the scraped manure or solids are stored for less than six months.

“Unformed settled open feedlot effluent basin” means a settled open feedlot effluent basin, other than a formed settled open feedlot effluent basin.

“Vegetative infiltration basin” or “VIB” means an open feedlot operation structure in which settled open feedlot effluent is discharged into a relatively flat basin area which is bermed to prevent entry or discharge of surface water flows and is planted to permanent vegetation. An extensive tile system installed at a depth of three to five feet is used to collect infiltrated settled open feedlot effluent from the VIB and discharge it into a VTA for further treatment. As opposed to wetlands, which are designed to maintain a permanent water level, a VIB is designed to maximize water infiltration into the soil and thus normally will have standing water for only short periods of time. Removal of settleable solids is required prior to discharge of open feedlot effluent into the VIB. Soil suitability is essential to ensure adequate filtration and treatment of pollutants. Periodic harvesting of vegetation is required.

“Vegetative treatment area” or “VTA” means an open feedlot operation structure in which settled open feedlot effluent is discharged into areas which are level in one dimension and have a slight slope (less than 5 percent) in the other dimension and are planted to relatively dense permanent vegetation. Settled open feedlot effluent must be discharged evenly across the top width of the VTA and allowed to slowly flow downslope through the VTA. Level spreaders or other practices may be required to maintain even flow throughout the length of the VTA. Management to maintain a dense vegetation cover is required, as is periodic harvesting of vegetation.

“Water of the state” means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

“Waters of the United States” means the same as defined in 40 CFR 122.2 as that section existed on July 1, 2005.

567—65.101(459A) Minimum open feedlot effluent control requirements and reporting of releases. An open feedlot operation shall provide for the management of manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent by using an open feedlot control method as provided in subrules 65.101(1) to 65.101(8). A release shall be reported to the department as provided in subrule 65.101(9).

65.101(1) All settleable solids from open feedlot effluent shall be removed prior to discharge into a water of the state.

a. The settleable solids shall be removed by use of a solids settling facility. The construction of a solids settling facility is not required where existing site conditions provide for removal of settleable solids prior to discharge into a water of the state.

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b. The removal of settleable solids shall be deemed to have occurred when the velocity of flow of the open feedlot effluent has been reduced to less than 0.5 feet per second for a minimum of five minutes. A solids settling facility shall have sufficient capacity to store settleable solids between periods of land application and to provide required flow-velocity reduction for open feedlot effluent flow volumes resulting from a precipitation event of less intensity than a ten-year, one-hour frequency event. A solids settling facility which receives open feedlot effluent shall provide a minimum of one square foot of surface area for each eight cubic feet of open feedlot effluent per hour resulting from a ten-year, one-hour frequency precipitation event.

65.101(2) This subrule shall apply to an open feedlot operation which has obtained an NPDES permit pursuant to 65.102(455B,459A) or 65.103(455B,459A).

a. An open feedlot operation may discharge manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent into any waters of the United States due to a precipitation event, if any of the following apply:

(1) For an open feedlot operation that houses cattle, other than veal calves, the operation is designed, constructed, operated, and maintained to comply with the requirements of 567—subrule 62.4(12) and not to discharge manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent resulting from precipitation events less than or equal to the 25-year, 24-hour precipitation event into any waters of the United States.

(2) For an open feedlot operation that houses veal calves, swine, chickens, or turkeys, the operation is designed, constructed, operated, and maintained not to discharge manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent resulting from precipitation events less than or equal to the 100-year, 24-hour precipitation event into any waters of the United States.

b. If the open feedlot operation is designed, constructed, and operated in accordance with the requirements of 567—subrule 62.4(12) and in accordance with any of the manure control alternatives listed in Appendix A of these rules or the AT system requirements in rule 65.110(459A), the operation shall be considered to be in compliance with this rule, unless a discharge from the operation causes a violation of state water quality standards. If water quality standards violations occur, the department may impose additional open feedlot effluent control requirements upon the operation, as specified in subrule 65.101(3).

65.101(3) An open feedlot operation which has an animal unit capacity of 1,000 animal units or more, or an open feedlot operation which is a large CAFO, or a medium CAFO as defined in rule 65.100(455B,459,459A) or a designated CAFO pursuant to rule 65.103(455B,459A) shall not discharge manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent from an open feedlot operation structure or production area into any waters of the United States, unless the discharge is pursuant to an NPDES permit. The control of manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent originating from the open feedlot operation may be accomplished by the use of a solids settling facility, settled open feedlot effluent basin, AT system, or any other open feedlot effluent control structure or practice approved by the department. The department may require the diversion of surface drainage prior to contact with an open feedlot operation structure. Settleable solids shall be settled from open

feedlot effluent before the effluent enters a settled open feedlot effluent basin or AT system.

65.101(4) Alternative control practices. If, because of topography or other factors related to the site of an open feedlot operation, it is economically or physically impractical to comply with open feedlot effluent control requirements using an open feedlot control method in subrule 65.101(2), the department shall allow an open feedlot operation covered by the NPDES permit application requirements of 65.102(455B,459A) or 65.103(455B,459A) to use other open feedlot effluent control practices, provided the open feedlot operation satisfactorily demonstrates by appropriate methods that those practices will provide an equivalent level of open feedlot effluent control that would be achieved by using an open feedlot control method as provided in 65.101(2).

65.101(5) No direct discharge of open feedlot effluent shall be allowed from an open feedlot operation into a publicly owned lake, a known sinkhole, or an agricultural drainage well.

65.101(6) Land application.

a. General requirements. Open feedlot effluent shall be land-applied in a manner which will not cause pollution of surface water or groundwater. Application in accordance with the provisions of state law and the rules in this chapter shall be deemed as compliance with this requirement.

b. Designated areas. A person shall not apply manure on land within 200 feet from a designated area or, in the case of a high quality water resource, within 800 feet, unless one of the following applies:

(1) The manure is land-applied by injection or incorporation on the same date as the manure was land-applied.

(2) An area of permanent vegetation cover, including filter strips and riparian forest buffers, exists for 50 feet surrounding the designated area other than an unplugged agricultural drainage well or surface intake to an unplugged agricultural drainage well, and the area of permanent vegetation cover is not subject to manure application.

c. CAFOs. The discharge of manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent to waters of the United States from a CAFO as a result of the application of that manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where the discharge is an agricultural storm water discharge as provided in 33 U.S.C. 1362(14). For the purpose of this paragraph, where the manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent has been applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent as specified in 65.112(8), a precipitation-related discharge of manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent from land areas under the control of a CAFO is an agricultural storm water discharge.

65.101(7) The owner of an open feedlot operation who discontinues the use of the operation shall remove and land-apply in accordance with state law all manure, process wastewater and open feedlot effluent from the open feedlot operation structures as soon as practical but not later than six months following the date the open feedlot operation is discontinued. The owner of a CAFO shall maintain compliance with all requirements in the CAFO's NPDES permit until all manure, process wastewater and open feedlot effluent has

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been removed and land-applied pursuant to the CAFO's NMP.

65.101(8) Stockpiling of scraped manure and settleable solids. A CAFO must manage stockpiles as required by 65.101(2) or 65.101(3). Stockpiles of manure scraped from open feedlot operations and stockpiles of settleable solids shall comply with the following requirements.

a. Stockpiles must be land-applied in accordance with 65.101(6) as soon as possible but not later than six months after they are established.

b. Stockpiles shall not be located within 200 feet from a designated area or, in the case of a high quality water resource, within 800 feet, and areas of concentrated flow located downslope of the stockpile shall be planted to permanent vegetation cover, including filter strips and riparian forest buffers.

c. Stockpiles shall not be located in areas where water ponds or has concentrated flow.

d. Stockpiles shall not be located within 200 feet of a drainage tile line intake or known sinkhole unless the stockpile is located so that any runoff from the stockpile will not reach the intake or sinkhole.

65.101(9) A release, as defined in rule 65.100(455B,459, 459A), shall be reported to the department as provided in this subrule. This subrule does not apply to land application of manure, process wastewater, open feedlot effluent, settled open feedlot effluent or settleable solids in compliance with these rules, or to precipitation- or snowmelt-induced runoff from open feedlots in compliance with the minimum control requirements set forth in this rule.

a. Notification. A person storing, handling, transporting, or land-applying manure, process wastewater, open feedlot effluent, settled open feedlot effluent or settleable solids from an open feedlot operation who becomes aware of a release shall notify the department of the occurrence of release as soon as possible but not later than six hours after the onset or discovery of the release by contacting the department at (515)281-8694. The local police department or the office of the sheriff of the affected county shall also be contacted within the same time period if the release involves a public roadway and public safety could be threatened. Reports made pursuant to this rule shall be confirmed in writing as provided in 65.101(9)"c."

b. Verbal report. The verbal report of such a release should provide information on as many items listed in 65.101(9)"c" as available information will allow.

c. Written report. The written report of a release shall be submitted at the request of the department within 30 days after the verbal report of the release and contain at a minimum the following information:

(1) The approximate location of the alleged release (including at a minimum the quarter-quarter section, township and county in which the release occurred or was discovered).

(2) The time and date of onset of the alleged release, if known, and the time and date of the discovery of the alleged release.

(3) The time and date of the verbal report to the department of the release.

(4) The name, mailing address and telephone number of the person reporting the release.

(5) The name, mailing address and telephone number of any other person with knowledge of the event who can be contacted for further information.

(6) The source of the manure, process wastewater, open feedlot effluent, settled open feedlot effluent or settleable

solids allegedly released (e.g., settled open feedlot effluent basin).

(7) The estimated or known volume of manure, process wastewater, open feedlot effluent, settled open feedlot effluent, or settleable solids allegedly released.

(8) The weather conditions at the time of the onset or discovery of the release.

(9) If known, the circumstances under which the alleged release occurred or exists (e.g., overflow, storage structure breach, equipment malfunction or breakdown, land runoff).

(10) The approximate location of the nearest stream or other water body which is or could be impacted by the alleged release, and the approximate location to the alleged release of any known tile intakes or tile lines which could be a direct conveyance to a surface water or groundwater.

(11) A description of any containment or remedial measures taken to minimize the impact of the release.

(12) Any information that may assist the department in evaluating the release.

d. Reporting of subsequent findings. All subsequent findings and laboratory results should be reported and submitted in writing to the department as soon as they become available.

e. Waiver of notification requirement. A waiver from the notification requirement of paragraph "a" of this subrule may be granted by the department for a release to a specific drainage tile line or intake if sufficient information is provided to demonstrate that the drainage tile line or intake will not result in a discharge to a water of the state.

567—65.102(455B,459A) NPDES permits required for CAFOs. Concentrated animal feeding operations (CAFOs) are point sources that require NPDES permits.

65.102(1) Duty to apply. Each CAFO owner or operator must apply for an NPDES permit, except as provided in subrule 65.102(2). The owner or operator of a CAFO that includes an open feedlot must apply for an individual NPDES permit. The application procedures are prescribed in rule 65.104(455B,459A).

65.102(2) Exception. An open feedlot operation shall not be required to obtain an NPDES permit if the operation does not discharge manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent into any waters of the United States.

567—65.103(455B,459A) Departmental evaluation; CAFO designation; remedial actions.

65.103(1) The department may evaluate any animal feeding operation that is not defined as a large or medium CAFO, and designate it as a CAFO if, after an on-site inspection, it is determined to be a significant contributor of manure or process wastewater to waters of the United States. In making this determination, the department shall consider the following factors:

a. The size of the operation and the amount of manure or process wastewater reaching waters of the United States;

b. The location of the operation relative to waters of the United States;

c. The means of conveyance of manure or process wastewater to waters of the United States;

d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure or process wastewater into waters of the United States; and

e. Other relevant factors.

65.103(2) No animal feeding operation with an animal capacity less than that specified for a medium CAFO shall be designated as a CAFO unless manure or process wastewater

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from the operation is discharged into a water of the United States:

- a. Through a man-made ditch, flushing system, or other similar man-made device; or
- b. Which originates outside of and passes over, across or through the facility or otherwise comes into direct contact with animals confined in the operation.

65.103(3) The owner or operator of a designated CAFO shall apply for an NPDES permit no later than 90 days after receiving written notice of the designation.

65.103(4) If departmental evaluation determines that any of the conditions listed in paragraph 65.103(4)“a,” “b,” or “c” exist, the open feedlot operation shall institute necessary remedial actions within a time specified by the department to eliminate the conditions warranting the determination, if the operation receives a written notification from the department of the need to correct the conditions.

- a. Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is being discharged into a water of the state and the operation is not providing the applicable minimum level of manure control as specified in rule 65.101(459A);

- b. Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is causing or may reasonably be expected to cause pollution of a water of the state; or

- c. Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is causing or may reasonably be expected to cause a violation of state water quality standards.

567—65.104(455B,459A) NPDES permits.

65.104(1) Existing animal feeding operations holding an NPDES permit. Animal feeding operations which hold a valid NPDES permit issued prior to September 14, 2005, are not required to reapply for an NPDES permit. However, the operations are required to apply for permit renewal in accordance with subrule 65.104(10).

65.104(2) Existing animal feeding operations not holding an NPDES permit. Animal feeding operations in existence prior to April 14, 2003, which were defined as CAFOs under rules that were in effect prior to April 14, 2003, but which have not obtained a permit, should have applied for an NPDES permit by April 14, 2003. Animal feeding operations in existence on April 14, 2003, which were not defined as CAFOs under rules that were in effect prior to April 14, 2003, shall apply for an NPDES permit no later than July 31, 2007.

65.104(3) Expansion of existing animal feeding operations. A person intending to expand an existing animal feeding operation which, upon completion of the expansion, will be defined as a CAFO shall apply for an NPDES permit at least 90 days prior to the scheduled expansion. Operation of the expanded portion of the facility shall not begin until an NPDES permit has been obtained.

65.104(4) New animal feeding operations. A person intending to begin a new animal feeding operation which, upon completion, will be defined as a CAFO shall apply for an NPDES permit at least 180 days prior to the date operation of the new animal feeding facility is scheduled. Operation of the new facility shall not begin until an NPDES permit has been obtained.

65.104(5) Permits required as a result of departmental designation. An animal feeding operation which is required to apply for an NPDES permit as a result of departmental designation (in accordance with the provisions of 65.103(455B,459A)) shall apply for an NPDES permit with-

in 90 days of receiving written notification of the need to obtain a permit. Once application has been made, the animal feeding operation is authorized to continue to operate without a permit until the application has either been approved or disapproved by the department, provided that the owner or operator has submitted all requested information and promptly taken all steps necessary to obtain coverage.

65.104(6) Voluntary permit applications. Applications for NPDES permits received from animal feeding operations which are not defined as CAFOs will be acknowledged and returned to the applicant. NPDES permits will not be issued for facilities which are not defined or designated as CAFOs.

65.104(7) Application forms. An application for an NPDES permit shall be made on a form provided by the department. The application shall be complete and shall contain information required by the department. Applications submitted after September 30, 2006, shall include a nutrient management plan as required in rule 65.112(459A). The application shall be signed by the person who is legally responsible for the animal feeding operation and its associated manure or process wastewater control system.

65.104(8) Compliance schedule. When necessary to comply with a standard which must be met at a future date, an NPDES permit shall include a schedule for modification of the permitted facility to meet the standard. The schedule shall not relieve the permittee of the duty to obtain a construction permit pursuant to rule 65.105(459A).

65.104(9) Permit conditions. NPDES permits shall contain conditions required by 40 CFR Section 122.41 and conditions considered necessary by the department to ensure compliance with all applicable rules of the department, to ensure that the production area and land application areas are operated and maintained as required by Iowa law, to protect the public health and beneficial uses of waters of the United States, and to prevent water pollution from manure storage or application operations. Any more stringent conditions of 2005 Iowa Code Supplement chapter 459A, 567—subrule 62.4(12), and this chapter that apply to animal feeding operations shall govern. For CAFOs that maintain cattle, swine, or poultry, the following conditions shall be included:

- a. Nutrient management plan. Open feedlot CAFOs shall comply with the requirements of 65.112(459A) and any additional nutrient management plan requirements for CAFOs in these rules by December 31, 2006. CAFOs that seek to obtain coverage under an NPDES permit issued after December 31, 2006, shall have a nutrient management plan developed and implemented upon the date of permit coverage.

- b. Inspections and record keeping.

- (1) Visual inspections. Routine visual inspections of the CAFO production area must be conducted. At a minimum the following must be visually inspected:

- 1. Weekly inspections of all storm water diversion, run-off diversion structures, and devices channeling contaminated storm water to the open feedlot structure.

- 2. Daily inspection of water lines, including drinking water or cooling water lines.

- (2) Corrective actions. Any deficiencies found as a result of the inspections required in 65.104(9)“b”(1) or as a result of the liquid level reporting required in 65.104(9)“e” must be corrected as soon as possible.

- (3) The following records must be maintained on site for a period of five years from the date they are created and must be made available to the department upon request:

- 1. Records documenting the inspections required in 65.104(9)“b”(1).

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2. Records of weekly liquid level observations as required in 65.104(9)“e.”

3. Records documenting any actions taken to correct deficiencies as required in 65.104(9)“b”(2).

c. Large CAFOs—transfer of manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent. Prior to transferring manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent to other persons, a large CAFO must provide the recipient of the manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent with the most current nutrient analysis. A large CAFO must retain for five years records of the date, recipient name and address, nutrient analysis and approximate amount of manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent transferred to another person.

d. Minimum monitoring requirements for AT systems. During the first two years of operation of an AT system, the following minimum monitoring will be required:

(1) Discharge monitoring. An effluent collection point must be established at the outlet of the AT system, and the flow volume recorded and an effluent sample collected on each day a discharge from the AT system occurs. Discharge samples must be submitted to a certified laboratory and analyzed for: total Kjeldahl N, NH₄ N, total P, COD, total suspended solids, and chloride.

(2) Discharge monitoring—tile lines. If the AT system includes a tile system installed to enhance infiltration within the VTA in accordance with 65.110(6)“h” or 65.110(7)“h,” water samples shall be collected from a sampling point located downgradient of the VTA on each individual tile line or combination of tile lines on the following schedule:

1. Quarterly sampling. One sample shall be taken from each sampling point once each quarter (January - March, April - June, July - September, October - December), and the level of flow in the tile system recorded at the time of sampling. The sample shall be collected at least ten days after a rainfall event of one inch or greater; and samples must be taken at least two, but not more than four, months apart. If there is no discharge from the tile line at a time that meets these requirements, documentation on appropriate department forms can be substituted for the sample and analysis. Collected samples shall be submitted to a certified laboratory and analyzed for: total Kjeldahl N, NH₄ N, total P, COD, total suspended solids, and chloride.

2. Event sampling. Each year, two rainfall event related tile flow samples shall be collected from each sampling point. For each sampling event, one sample shall be taken from each sampling point three to five days following a rainfall event of one inch or greater, and the level of flow in the tile system recorded at the time of sampling. Collected samples shall be submitted to a certified laboratory and analyzed for: total Kjeldahl N, NH₄ N, total P, COD, total suspended solids, and chloride.

(3) Groundwater monitoring. A minimum of two groundwater monitoring wells or piezometers (one upgradient and one downgradient) must be established at each AT system. Additional wells or piezometers may be required if the department determines they are necessary to adequately assess the impacts the AT system is having on groundwater. Samples must be collected from these wells quarterly and analyzed for: NH₄ N, NO₃ N, and chloride.

(4) Soil sampling.

1. Initial and permit renewal sampling. Soil sampling shall be conducted prior to initial discharge of open feedlot

effluent into the AT system and repeated prior to renewal of the NPDES permit, as outlined below:

- VTA. A minimum of two sampling sites shall be established within each VTA cell, one located where runoff enters the VTA and one where runoff is discharged from the VTA. Soil samples shall be taken from these sites to a depth of 4 feet, with separate samples taken to represent the 0 to 6-inch depth, the 6- to 12-inch depth, and in one-foot increments thereafter. All samples shall be analyzed for NO₃ N, NH₄ N, P by either the Olsen or Mehlich-3 method, and pH.

If the length of effluent flow through the VTA exceeds 400 feet, an additional soil sample representing the 0 to 6-inch depth should be taken for each additional 200 feet of VTA length. Samples shall be analyzed for NO₃ N, NH₄ N, P by either the Olsen or Mehlich-3 method, and pH.

- VIB. One sampling site shall be established where open feedlot effluent enters the VIB. Soil samples at this site shall be taken to a depth of 4 feet, with separate samples taken to represent the 0 to 6-inch depth, the 6- to 12-inch depth, and in one-foot increments thereafter. These samples shall be analyzed for NO₃ N, NH₄ N, P by either the Olsen or Mehlich-3 method, and pH.

An additional sampling site shall be established where open feedlot effluent is discharged from the VIB through the tile system. Soil samples shall be taken at this site to represent the 0 to 6-inch depth, and analyzed for NO₃ N, NH₄ N, P by either the Olsen or Mehlich-3 method, and pH.

2. Annual sampling. One sampling site shall be established in each cell of a VTA and VIB in an area which is expected to receive the greatest amount of open feedlot effluent. Soil samples shall be taken from each site prior to initiating discharge of open feedlot effluent into the VTA or VIB and shall be repeated annually. Each sample shall represent a composite of 10 to 12 individual samples taken to a 6-inch depth, and analyzed for P using either the Olsen or Mehlich-3 method and for pH.

Monitoring requirements for an AT system following the initial two-year operation period will be determined at the time the NPDES permit for the operation is due for renewal.

e. Quarterly reporting requirements for CAFOs with outside liquid impoundments. A permittee with outside liquid impoundments must submit quarterly reports by April 10, July 10, October 10, and January 10, following the respective calendar quarters, documenting daily precipitation, weekly impoundment liquid levels, volume of liquid removed from the impoundments, and the date, time, duration, and estimated volume of any overflow. Liquid levels must be obtained by observing a depth marker which clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour precipitation event or the 100-year, 24-hour precipitation event as applicable pursuant to 65.101(2)“a.”

f. Annual reporting requirements for all CAFOs with systems other than AT systems. All permittees must submit an annual report to the department by January 10 of the following year. The annual report must include:

(1) The number and type of animals in the open feedlot operation;

(2) Estimated amount of manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent generated by the CAFO in the previous 12 months (tons/gallons);

(3) Estimated amount of total manure transferred to other persons by the CAFO in the previous 12 months (tons/gallons);

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(4) Total number of acres for land application covered by the nutrient management plan and the total number of acres under control of the CAFO that were used for land application of manure in the previous 12 months;

(5) Summary of all manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume; and

(6) A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.

g. Quarterly reporting requirements for CAFOs with AT systems. A permittee with an AT system must submit quarterly reports by April 10, July 10, October 10, and January 10, following the respective calendar quarters. The quarterly reports shall provide all of the following information:

(1) Daily precipitation.

(2) Dates on which manure, process wastewater, settled open feedlot effluent, open feedlot effluent, or settleable solids were removed from the production area and estimated amounts of manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent removed (tons/gallons).

(3) Dates on which discharges from the production area or the AT system occurred and the estimated duration and volume of discharge on each discharge date.

(4) Results of laboratory analyses of discharge samples for each date a discharge from the production area or the AT system occurred. If the results of laboratory analyses are not available by the due date of the quarterly report, the results shall be provided with the following quarter's report.

(5) Results of laboratory analyses of samples taken from the groundwater monitoring wells or piezometers. If the results of laboratory analyses are not available by the due date of the quarterly report, the results shall be provided with the following quarter's report.

h. Annual reporting requirements for CAFOs with AT systems. A permittee shall submit an annual report by January 10 of the following year. The annual report must include all of the following:

(1) The number and type of animals in the open feedlot operation.

(2) Estimated amount of total manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent generated by the CAFO in the previous 12 months (tons/gallons).

(3) Estimated amount of total manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent transferred to other persons by the CAFO in the previous 12 months (tons/gallons).

(4) Total number of acres for land application covered by the nutrient management plan and the total number of acres under control of the CAFO that were used for land application of manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent in the previous 12 months.

(5) Summary of all manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent discharges from the production area or AT system that have occurred in the previous 12 months, including date, time, and approximate volume.

(6) Harvest dates and estimated amounts of forage removed from the AT system during the previous 12 months.

(7) Results of soil and groundwater sampling within the AT system during the previous 12 months.

(8) A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.

65.104(10) Permit renewal.

a. General requirements. An NPDES permit may be issued for any period of time not to exceed five years. An application for renewal of an NPDES permit must be submitted to the department at least 180 days prior to the date the permit expires. Each permit to be renewed shall be subject to the rules of the department in effect at the time of renewal. A permitted animal feeding operation which ceases to be a CAFO will be exempted from the need to retain an NPDES permit if the permittee can demonstrate to the satisfaction of the department that there is no remaining potential for a discharge of manure that was generated while the operation was a CAFO, other than agricultural storm water from land application areas.

b. Permits involving use of AT systems.

(1) During the first two years of operation of an AT system, a permittee will be issued a two-year NPDES permit. Renewal of this permit is contingent upon proper operation and maintenance of the AT system, submittal of all required records and reports, and demonstration that the AT system is providing an equivalent level of performance to that achieved by a containment system that is designed and operated as required by statute, 567—subrule 62.4(12) and Division II of this chapter.

(2) If departmental review of an AT system indicates the system is not meeting the equivalent performance standard, the permittee may either be required to make needed system modifications to enable compliance with this standard or be required to install a conventional runoff containment system. Open feedlot operations found to be in compliance with the equivalent performance standard will be issued a five-year NPDES permit which allows continued use of the AT system.

65.104(11) Permit modification, suspension or revocation. The department may modify, suspend, refuse to renew or revoke in whole or part any NPDES permit for cause. Any more stringent requirement pursuant to 40 CFR Section 122.62, 122.63 or 122.64 shall control. Cause for modification, suspension or revocation of a permit may include the following:

a. Violation of any term or condition of the permit.

b. Obtaining a permit by misrepresentation of fact or failure to disclose fully all material facts.

c. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

d. Failure to retain, make available, or submit the records and information that the department requires in order to ensure compliance with the operation and discharge conditions of the permit.

e. A determination by the department that the continued operation of a CAFO constitutes a clear, present and impending danger to public health or the environment.

567—65.105(459A) Construction permits.

65.105(1) Open feedlot operations required to obtain a construction permit. An open feedlot operation must obtain a construction permit prior to any of the following:

a. Constructing or expanding a settled open feedlot effluent basin or AT system or installing a settled open feedlot effluent transfer piping system if the open feedlot operation is required to be issued an NPDES permit.

b. Increasing the animal unit capacity of the open feedlot operation to more than the animal unit capacity approved by the department in a previous construction permit.

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c. Increasing the volume of settled open feedlot effluent, settleable solids or open feedlot effluent stored at the open feedlot operation to more than the volume approved by the department in a previous construction permit.

d. Repopulating the open feedlot operation if it was discontinued for 24 months or more and the animal unit capacity will be 1,000 animal units or more.

65.105(2) When a construction permit is not required.

a. Research colleges. A construction permit is not required for construction of a settled open feedlot effluent basin or AT system if the basin or system is part of an open feedlot operation which is owned by a research college conducting research activities as provided in 2005 Iowa Code Supplement section 459A.105.

b. Solids settling facilities. A construction permit is not required for construction of a solids settling facility.

65.105(3) Applications that cannot be approved. The department shall not approve an application for a construction permit unless the applicant submits all of the following:

a. For an open feedlot operation submitting an application for a construction permit on or after September 30, 2006, a nutrient management plan as provided in rule 65.112(459A).

b. An engineering report, construction plans, and specifications prepared by a professional engineer or the Natural Resources Conservation Service of the United States Department of Agriculture certifying that the construction of the settled open feedlot effluent basin or AT system complies with the construction design standards required in Division II of Chapter 65.

65.105(4) Plan review criteria; time for approval or disapproval.

a. Plan review criteria. Review of plans and specifications shall be conducted by the department to determine the potential of the settled open feedlot effluent basin or AT system to achieve the level of control being required of the open feedlot operation. Applicable criteria contained in federal law, state law, these rules, Natural Resources Conservation Service design standards and specifications, unless inconsistent with federal or state law or these rules, and United States Department of Commerce precipitation data will be used in the review. If the proposed facility plans are not adequately covered by these criteria, applicable criteria contained in current technical literature shall be used.

b. Time for approval or disapproval. The department shall approve or disapprove an application for a construction permit within 60 days after receiving the permit application. However, the applicant may deliver a notice requesting a continuance. Upon receipt of a notice, the time required for the department to act upon the application shall be suspended for the period provided in the notice, but for not more than 30 days after the department's receipt of the notice. The applicant may submit more than one notice. If review of the application is delayed because the application is incomplete, and the applicant fails to supply requested information within a reasonable time prior to the deadline for action on the application, the permit may be denied and a new application will be required if the applicant wishes to proceed. The department may also provide for a continuance when it considers the application. The department shall provide notice to the applicant of the continuance. The time required for the department to act upon the application shall be suspended for the period provided in the notice, but for not more than 30 days. However, the department shall not provide for more than one continuance.

65.105(5) Expiration of construction permits. The construction permit shall expire if construction, as defined in rule 65.106(459A), is not begun within one year and completed within three years of the date of issuance. A construction permit issued prior to September 14, 2005, shall expire if construction, as defined in rule 65.106(459A), is not begun within one year of the date of issuance and shall expire on September 15, 2012, if construction is not completed by September 14, 2012. The director may grant an extension of time to begin or complete construction if it is necessary or justified, upon showing of such necessity or justification to the director.

65.105(6) Revocation of construction permits. The department may suspend or revoke a construction permit, modify the terms or conditions of a construction permit, or refuse to renew a permit expiring according to subrule 65.105(5) if it determines that the operation of the open feedlot operation constitutes a clear, present and impending danger to public health or the environment.

65.105(7) Permit prior to construction. An applicant for a construction permit shall notify the department prior to the start of construction for any open feedlot operation structure not required to be covered by a construction permit. The applicant shall not begin construction of a settled open feedlot effluent basin or AT system or begin installation of a settled open feedlot effluent transfer piping system until the person has been granted a permit for the construction by the department.

567—65.106(459A) Construction. For purposes of these rules:

65.106(1) Construction of an animal feeding operation structure begins or an animal feeding operation structure is constructed when any of the following occurs:

a. Excavation commences for a proposed open feedlot operation structure or proposed expansion of an existing open feedlot operation structure.

b. Installation of forms for concrete for a proposed open feedlot operation structure or the proposed expansion of an existing open feedlot operation structure.

c. Installation of piping for movement of settled open feedlot effluent or open feedlot effluent within or between open feedlot operation structures as proposed or proposed to be expanded.

65.106(2) Construction does not begin upon occurrence of any of the following:

a. Removal of trees, brush, or other vegetative growth.

b. Construction of driveways or roads.

c. General earth moving for leveling or compacting at the site.

d. Installation of temporary utility services.

567—65.107(459A) Construction permit application. An open feedlot operation required to obtain a construction permit in accordance with the provisions of 65.105(1) shall apply for a construction permit at least 90 days before the date that construction, installation, or modification is scheduled to start.

65.107(1) Conceptual design. Prior to submitting an application for a construction permit, the applicant may submit a conceptual design and site investigation report to the department for review and comment.

65.107(2) Application for a construction permit for an open feedlot shall be made on a form provided by the department. The application shall include all of the information necessary to enable the department to determine the potential of the proposed settled open feedlot effluent basin or AT sys-

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tem to achieve the level of control required of the open feedlot. A construction permit application shall include the following:

- a. The name of the owner of the open feedlot operation and the name of the open feedlot operation, including the owner's mailing address and telephone number.
- b. The name of the contact person for the open feedlot operation, including the person's mailing address and telephone number.
- c. The location of the open feedlot operation.
- d. A statement providing that the application is for any of the following:

- (1) The construction or expansion of a settled open feedlot effluent basin or AT system for an existing open feedlot operation which is not expanding;

- (2) The construction or expansion of a settled open feedlot effluent basin or AT system for an existing open feedlot operation which is expanding;

- (3) The construction of a settled open feedlot effluent basin or AT system for a proposed new open feedlot operation.

- e. The animal unit capacity for each animal species in the open feedlot operation before and after the proposed construction.

- f. An engineering report, construction plans and specifications prepared by a professional engineer or by Natural Resources Conservation Service personnel for the settled open feedlot effluent basin or AT system.

- g. A report on the soil and hydrogeologic information for the site, as described in subrules 65.109(2) and 65.110(4).

- h. Information including, but not limited to, maps, drawings and aerial photos that clearly show the location of all the following:

- (1) The open feedlot operation and all existing and proposed settled open feedlot effluent basins or AT systems, clean water diversions, and other pertinent features or structures.

- (2) Any other open feedlot operation under common ownership or common management and located within 1,250 feet of the open feedlot operation.

- (3) Any public water supply system as defined in Iowa Code section 455B.171 or drinking water well which is located less than the distance from the open feedlot operation required by rule 65.108(455B,459A). Information shall also be provided as to whether the proposed settled open feedlot effluent basin or AT system will meet all applicable separation distances.

567—65.108(455B,459A) Well separation distances for open feedlot operations.

65.108(1) Settled open feedlot effluent basins. Settled open feedlot effluent basins shall be separated from wells as follows:

- a. Public wells. 1,000 feet from shallow wells and 400 feet from deep wells;
- b. Private wells. 400 feet from both shallow and deep wells.

65.108(2) Open feedlots, solids settling facilities and AT systems. Open feedlots, solids settling facilities and AT systems shall be separated from wells as follows: for both public and private wells, 200 feet from shallow wells and 100 feet from deep wells.

65.108(3) Variances. Variances to this rule may be granted by the director if the applicant provides an alternative that is substantially equivalent to the rule or provides improved effectiveness or protection as required by the rule. Variance requests shall be made in writing at the time the

construction permit application is submitted. The denial of a variance may be appealed to the commission.

567—65.109(459A) Settled open feedlot effluent basins—investigation, design and construction requirements. A settled open feedlot effluent basin required to be constructed pursuant to a construction permit issued pursuant to 2005 Code Supplement section 459A.205 shall meet the design and construction requirements set forth in this rule.

65.109(1) Drainage tile investigation and removal. Prior to constructing a settled open feedlot effluent basin, the owner of the open feedlot operation shall investigate the site for the basin for a drainage tile line. The investigation shall be made by digging a core trench to a depth of at least six feet deep from ground level at the projected center of the berm of the basin. A written record of the investigation shall be submitted as part of the construction certification required in rule 65.111(459A). If a drainage tile line is discovered, one of the following solutions shall be implemented:

- a. The drainage tile line shall be rerouted around the perimeter of the basin at a distance of least 25 feet horizontally separated from the outside toe of the berm of the basin. For an area of the basin where there is not a berm, the drainage tile line shall be rerouted at least 50 feet horizontally separated from the edge of the basin.

- b. The drainage tile line shall be replaced with a nonperforated tile line under the basin floor. The nonperforated tile line shall be continuous and without connecting joints. There must be a minimum of three feet between the nonperforated tile line and the basin floor.

65.109(2) Soils and hydrogeologic report. A settled open feedlot effluent basin required to be constructed pursuant to a construction permit issued pursuant to rule 65.105(459A) shall meet design standards as required by a soils and hydrogeologic report. The report shall be submitted with the construction permit application as provided in rule 65.107(459A). The report shall include all of the following:

- a. A description of the steps taken to determine the soils and hydrogeologic conditions at the proposed construction site, a description of the geologic units encountered, and a description of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the basin.

- b. The subsurface soil classification of the site. A subsurface soil classification shall be based on ASTM international designation D 2487-92 or D 2488-90.

- c. The results of a soils investigation conducted at a minimum of three locations within the area of the basin reflecting the continuous soil profile existing within the area of the basin. The soils investigation results shall be used in determining subsurface soil characteristics and groundwater elevation and direction of flow at the proposed site. The soils investigation shall be conducted and utilized as follows:

- (1) By a qualified person ordinarily engaged in the practice of performing soils investigations.

- (2) At locations that reflect the continuous soil profile conditions existing within the area of the proposed basin, including conditions found near the corners and the deepest point of the proposed basin. The soils investigation shall be conducted to a minimum depth of ten feet below the proposed bottom elevation of the basin.

- (3) By methods which identify the continuous soil profile and do not result in mixing of soil layers. Soil corings using hollow stem augers and other suitable methods may be used.

- (4) If located in karst terrain, at least one soil coring shall be taken to a minimum depth of 25 feet below the bottom elevation of the settled open feedlot effluent basin or into

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bedrock, whichever is shallower. The department may accept information from the department's Geosam database in lieu of the coring. If bedrock is encountered, adequate investigation of the bedrock formation shall be made to determine if it consists of limestone, dolomite, or other soluble rock.

(5) Soil corings may be used to determine current groundwater levels by completing the corings as temporary monitoring wells as provided in 65.109(3)"a"(1) and measuring the water levels in these wells no earlier than seven days after installation as provided in 65.109(3)"a"(2).

(6) Upon abandonment of soil core holes, all soil core holes including those developed as temporary water level monitoring wells shall be plugged with concrete, Portland cement concrete grout, bentonite, or similar materials.

(7) If excavation methods are used in conducting the soils investigation, upon closure these excavations must be filled with suitable materials and adequately compacted to ensure they will not compromise the integrity of the basin liner.

65.109(3) Hydrology.

a. Determination of groundwater table. For purposes of this rule, groundwater table is the seasonal high-water table determined by a professional engineer, a groundwater professional certified pursuant to 567—Chapter 134, or qualified staff from the department or Natural Resources Conservation Service (NRCS). If a construction permit is required, the department must approve the groundwater table determination.

(1) Current groundwater levels shall be measured as provided in this subparagraph for either a formed settled open feedlot effluent basin or an unformed settled open feedlot effluent basin. Three temporary monitoring wells shall be developed according to 567—subrule 110.11(8). The top of the well screen shall be within five feet of the ground surface. Each well shall be extended to at least two feet below the proposed top of the liner of an unformed settled open feedlot effluent basin, or to at least two feet below the proposed bottom of the footings of a formed settled open feedlot effluent basin. In addition, the wells must be installed as follows:

1. Unformed basins. For an unformed settled open feedlot effluent basin, the monitoring wells may be installed in the soil core holes developed as part of conducting the soils investigation required in paragraph 65.109(2)"c."

2. Formed basins. For a formed settled open feedlot effluent basin, at least three temporary monitoring wells shall be installed as close as possible to three corners of the structure, with one of the wells close to the corner of deepest excavation. If the formed settled open feedlot effluent basin is circular, the three monitoring wells shall be equally spaced and one well shall be placed at the point of deepest excavation.

(2) The seasonal high-water table shall be determined by considering all relevant data, including the groundwater levels measured in the temporary monitoring wells not earlier than seven days following installation, NRCS soil survey information, soil characteristics such as color and mottling, other existing water table data, and other pertinent information. If a drainage system for artificially lowering the groundwater table will be installed in accordance with the requirements of paragraph 65.109(3)"c," the level to which the groundwater table will be lowered will be considered to represent the seasonal high-water table.

b. The settled open feedlot effluent basin shall be constructed with a minimum separation of two feet between the top of the liner of the basin and the seasonal high-water table.

c. If a drainage tile line around the perimeter of the basin is installed a minimum of two feet below the top of the basin liner to artificially lower the seasonal high-water table, the top of the basin's liner may be a maximum of four feet below the seasonal high-water table which existed prior to installation of the perimeter tile system. The seasonal high-water table may be artificially lowered by gravity flow tile lines or other similar system. However, the following shall apply:

(1) Except as provided in subparagraph (2), an open feedlot operation shall not use a nongravity mechanical system that uses pumping equipment.

(2) If the open feedlot operation was constructed before July 1, 2005, the operation may continue to use its existing nongravity mechanical system that uses pumping equipment, or it may construct a new nongravity mechanical system that uses pumping equipment. However, an open feedlot operation that expands the area of its open feedlot on or after April 1, 2011, shall not use a nongravity mechanical system that uses pumping equipment.

(3) Drainage tile lines may be installed to artificially lower the seasonal high-water table at a settled open feedlot effluent basin, if all of the following conditions are satisfied:

1. A device to allow monitoring of the water in the drainage tile lines and a device to allow shutoff of the flow in the drainage tile lines are installed, if the drainage tile lines do not have a surface outlet accessible on the property where the settled open feedlot effluent basin is located.

2. Drainage tile lines are installed horizontally at least 25 feet away from the outside toe of the berm of the settled open feedlot effluent basin. Drainage tile lines shall be placed in a vertical trench and encased in granular material which extends upward to the level of the seasonal high-water table which existed prior to installation of the perimeter tile system.

65.109(4) Karst terrain.

a. Construction prohibited. Settled open feedlot effluent basins shall not be constructed in areas which drain to known sinkholes or in karst terrain. Structure sites located within one mile of karst terrain shall be considered to be located in karst terrain, unless site-specific geologic information is submitted documenting that 25 feet of suitable materials exist between the structure bottom and carbonated bedrock or limestone or dolomite.

b. The use of formed structures is required to store liquid or dry manure in karst terrain.

(1) Formed structures constructed of concrete in karst terrain shall comply with the provisions of 65.15(14).

(2) The use of formed structures constructed of materials other than concrete and located in areas which drain to known sinkholes or located in karst terrain may be approved by the department if the proposed structures are designed by a professional engineer, a minimum of five feet vertical separation is maintained between the structure bottom and carbonated bedrock, and the engineer certifies and provides data showing the permeability of the geologic material below the structure's base is sufficiently low to provide an adequate barrier to prevent percolation into carbonated bedrock or groundwater.

c. Construction of settled open feedlot effluent basins is allowed in areas identified as karst terrain if site-specific geologic information is submitted documenting that 25 feet of suitable materials exist between the structure bottom and carbonated bedrock or limestone or dolomite.

65.109(5) Bedrock separation. A settled open feedlot effluent basin shall be constructed with at least four feet of sep-

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aration between the bottom of the basin and a bedrock formation.

65.109(6) Floodplain requirements.

a. Construction in floodplains. Open feedlot operation structures located on a floodplain or within a floodway of a river or stream may be required to obtain DNR permits and provide protection from inundation by flood waters, as specified in 567—Chapters 71 and 72.

b. Permits for dam construction. Open feedlot operation structures exceeding storage capacity or dam height thresholds may be required to obtain DNR permits, as specified in 567—71.3(455B) and 72.3(455B).

65.109(7) Liner design and construction. The liner of a settled open feedlot effluent basin shall comply with all of the following:

a. The liner shall comply with any of the following permeability standards:

(1) The liner shall be constructed to have a percolation rate that shall not exceed one-sixteenth inch per day at the design depth of the basin as determined by percolation tests conducted by the professional engineer. If a clay soil liner is used, the liner shall be constructed with a minimum thickness of 12 inches or the minimum thickness necessary to comply with the percolation rate in this paragraph, whichever is greater.

(2) The liner shall be constructed to have a percolation rate that shall not exceed one-sixteenth inch per day at the design depth of the basin. The design of the liner will specify a moisture content, compaction requirement, and liner thickness that will comply with the maximum allowable percolation requirement, and will be based on moisture content and percentage of maximum density as determined by a standard 5 point proctor test performed in accordance with ASTM D698 (Method A). The liner thickness will be based on laboratory tests of the compacted material, with a minimum liner thickness of 12 inches. Appropriate field or laboratory testing during construction shall be provided to verify the design requirements are met.

b. If a synthetic liner is used, the liner shall be installed to comply with the percolation rate required in 65.109(7)“a”(1).

65.109(8) Berm erosion inspection and repair. The owner of an open feedlot operation using a settled open feedlot effluent basin shall inspect the berms of the basin at least semi-annually for evidence of erosion. If the inspection reveals erosion which may impact the basin's structural stability or the integrity of the basin's liner, the owner shall repair the berms.

567—65.110(459A) AT systems—design requirements.**65.110(1) Containment volume.**

a. Adequate capacity must be provided within the AT system or within the solids settling facility for the open feedlot operation to contain expected open feedlot effluent from November 1 to March 30 or to hold the precipitation event as required by 65.101(2)“a,” whichever is greater. Controls on the solids settling facility or the AT system shall prevent release of collected open feedlot effluent to waters of the United States during the period from November 1 to March 30.

b. If the containment volume required in 65.110(1)“a” is provided in an open feedlot operation structure whose primary purpose is to remove settleable solids from open feedlot effluent prior to discharge into an AT system, the basin shall not be required to comply with the liner design and construction requirements of 65.109(7), provided the basin does not retain collected open feedlot effluent for more than seven

consecutive days following a precipitation event during the period from March 30 to November 1.

65.110(2) Solids settling. Settleable solids shall be removed from open feedlot effluent prior to discharge of the effluent into an AT system. Solids settling shall be conducted in conformance with the requirements of paragraph 65.101(1)“b.”

65.110(3) Drainage tile investigation and removal. Prior to constructing an AT system, the owner of the open feedlot operation shall investigate the site for the AT system for drainage tile lines. The investigation shall be made by digging a core trench to a depth of at least six feet from ground level at the projected center of the berm of the AT system. A written record of the investigation shall be submitted as part of the construction certification required in rule 65.111(459A). If a drainage tile line is discovered, one of the following solutions shall be implemented:

a. The drainage tile line shall be rerouted around the perimeter of the AT system at a distance of least 25 feet horizontally separated from the toe of the outside berm of the AT system. For an area of the system where there is not a berm, the drainage tile line shall be rerouted at least 50 feet horizontally separated from the edge of the system.

b. The drainage tile line shall be replaced with a nonperforated tile line under the AT system. The nonperforated tile line shall be continuous and without connecting joints. There must be a minimum of three feet of separation between the nonperforated tile line and the soil surface of the AT system.

65.110(4) Soils and hydrogeologic report. An AT system constructed pursuant to a construction permit issued pursuant to rule 65.105(459A) shall meet design standards as required by a soils and hydrogeologic report. The report shall be submitted with the construction permit application as provided in rule 65.107(459A). The report shall include all of the following:

a. A description of the steps taken to determine the soils and hydrogeologic conditions at the proposed construction site, a description of the geologic units encountered, and a description of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the AT system.

b. Subsurface soil classification of the site. A subsurface soil classification shall be based on ASTM international designation D 2487-92 or D 2488-90.

c. The results of a soils investigation conducted at a minimum of three locations within the area of the proposed AT system for AT systems of five acres or less, with one additional soils investigation site utilized for each additional three acres of surface area or fraction thereof. The soils investigation results shall be used in determining subsurface soil characteristics and groundwater elevation and direction of flow at the proposed AT system site. The soils investigation shall be conducted and utilized as follows:

(1) By a qualified person ordinarily engaged in the practice of performing soils investigations.

(2) At locations that reflect the continuous soil profile conditions existing within the area of the proposed AT system. The soils investigation shall be conducted to a minimum depth of ten feet below the elevation of the soil surface of the proposed AT system.

(3) By methods which identify the continuous soil profile and do not result in mixing of soil layers. Investigation methods may include soil corings using hollow stem augers, soil test pits, or other suitable methods.

(4) If located in karst terrain, at least one soil coring shall be taken to a minimum depth of 25 feet below the elevation of

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the soil surface of the proposed AT system or into bedrock, whichever is shallower. The department may accept well log information from the department's Geosam database in lieu of the coring. If bedrock is encountered, adequate investigation of the bedrock formation shall be made to determine if it consists of limestone, dolomite, or other soluble rock.

(5) Soil core holes may be used to determine current groundwater levels by completing the core holes as temporary monitoring wells and measuring the water levels in these wells not earlier than seven days after installation.

(6) Upon abandonment of the soil core holes, all soil core holes, including those developed as temporary water level monitoring wells, shall be plugged with concrete, Portland cement concrete grout, bentonite, or similar materials.

(7) If soil test pits or other excavation methods are used in conducting the soils investigation, upon closure these excavations must be filled with suitable materials and adequately compacted to ensure they will not compromise the integrity of the AT system.

65.110(5) Hydrology—groundwater table. For purposes of this rule, groundwater table is the seasonal high-water table determined by a professional engineer, a groundwater professional certified pursuant to 567—Chapter 134, or qualified staff from the department or Natural Resources Conservation Service (NRCS). If a construction permit is required, the department must approve the groundwater table determination.

a. Groundwater level measurements. Groundwater levels shall be measured using at least one of the following methods:

(1) Temporary monitoring wells. Three temporary monitoring wells shall be developed to a minimum of ten feet below the surface of the proposed AT system and constructed in accordance with requirements of 567—subrule 110.11(8). The top of the well screen shall be within five feet of the ground surface. These monitoring wells may be installed in the soil core holes developed as part of conducting the soils investigation required in paragraph 65.110(4)“c.”

(2) Test pits. Test pits may be used in lieu of temporary monitoring wells to determine the seasonal high-water table or prior to the construction of an AT system to ensure the required separation distance to the seasonal high-water table is being met. The bottom of each pit shall be a minimum of five feet below the proposed surface of the AT system. However, if the test pit is also being used to conduct the soils investigation required in 65.110(4)“c,” the bottom of the pit shall be a minimum of ten feet below the surface of the proposed AT system. Each pit shall be allowed to remain open and unaltered for a minimum of seven days for viewing by the department or NRCS qualified staff. Adequate protection (temporary berms and covers) shall be provided to prevent surface runoff from entering the test pits. Test pits shall be located as needed to provide an accurate assessment of soil materials and seasonal high groundwater levels throughout the area of the proposed AT system. A description of the materials present in the test pit shall be documented by all of the following:

- Digital photos;
- Description of soils including mottling;
- Weather conditions both prior to and during the period in which test pits are open.

b. Determination of seasonal high-water table. The seasonal high-water table shall be determined by considering all relevant data, including the groundwater levels measured in the temporary monitoring wells or test pits not earlier than seven days following installation, NRCS soil survey information, soil characteristics such as color and mottling found

in soil cores and test pits, other existing water table data, and other pertinent information. If a drainage system for artificially lowering the groundwater table will be installed in accordance with the requirements of paragraph 65.110(6)“g” or 65.110(7)“g,” the level to which the groundwater table will be lowered will be considered to represent the seasonal high-water table.

65.110(6) Vegetative infiltration basin followed by vegetative treatment area.

a. Computer modeling. Results of predictive computer modeling for the proposed AT system shall be used to determine suitability of the proposed site for the AT system and to predict performance of the AT system as compared to the use of a 25-year, 24-hour runoff containment system, over a 25-year period. A summary of the computer modeling results shall be provided to the department.

b. Size. The computer model used to determine if the proposed AT system will meet the equivalent performance standard shall also be used to establish the minimum required size of the VIB and VTA. However, the size of the VIB shall not be less than 30 percent of the total drainage area (feedlot and other) served by the basin, and the size of the VTA shall not be less than 30 percent of the surface area of the VIB.

c. Slope. The following slope requirements apply to the constructed system components.

(1) VIB. The maximum slope of the constructed VIB shall not exceed 1 percent.

(2) VTA. The constructed VTA shall be level in one dimension and have a slight slope (maximum of 5 percent) in the other dimension.

d. Berming.

(1) VIB. The VIB must be bermed to prevent inflow of surface water from outside the VIB and prevent surface outflow of feedlot effluent from the VIB.

(2) VTA. The VTA must be bermed to prevent inflow of surface water from outside areas.

e. Spreaders. Settled open feedlot effluent must be discharged evenly across the top width of the VTA and allowed to slowly flow downslope through the VTA. Level spreaders or other practices may be required to maintain uniform flow of settled open feedlot effluent across the width of the VTA as flow moves downslope through the VTA.

f. Soil permeability. Soil permeability within the VIB and VTA must be from 0.6 to 2.0 inches per hour throughout the soil profile to a depth of five feet. Soil permeability must be verified by conducting on-site or laboratory soil permeability testing.

g. Groundwater lowering system. The seasonal high-water table within the VIB and the VTA must be capable of being lowered to a depth of four to five feet with a perimeter tile system installed outside of the VIB or VTA. Design information must be provided which demonstrates the adequacy of the proposed groundwater lowering system. The tile system must satisfy the following requirements:

(1) If the tile system does not have a surface outlet accessible on the property where the AT system is located, a device to allow monitoring of the water in the tile system and a device to allow shutoff of the flow in the tile system must be installed.

(2) Tile lines in the system must be installed horizontally at least 25 feet away from the outside toe of the berm of the VIB or VTA.

h. Tile system to enhance infiltration within the VTA. A tile system may be installed at the perimeter of the VTA cells to enhance infiltration within the VTA. The tile system must satisfy the following requirements:

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(1) Tile lines shall be installed at the centerline of the berms of the VTA cells.

(2) The tile lines shall be constructed such that no settled open feedlot effluent can enter the lines except through infiltration through the soil profile.

(3) A shutoff valve and sampling point located downslope of the VTA cell shall be provided for each individual tile line. However, if multiple tile lines are brought together into a common tile line, a single shutoff valve and sampling point may be utilized.

(4) Monitoring of the tile lines must be conducted in accordance with the requirements of 65.104(9)“d”(2).

i. Depth to sands, gravels, or glacial outwash.

(1) VIB. A VIB is not allowed if the depth to sands, gravels, or glacial outwash is less than ten feet.

(2) VTA. A VTA is not allowed if the depth to sands, gravels, or glacial outwash is less than six feet.

(3) A soils investigation that documents sands found are in isolated sand lenses that will not have a significant impact on subsurface water flow or groundwater quality shall not prohibit use of the site.

j. Depth to bedrock. A minimum of ten feet of overburden or loose material must exist between the surface of the constructed VIB or VTA and underground bedrock.

k. Flooding. Both the VIB and the VTA must be constructed in areas which are not subject to flooding more frequently than once in 25 years.

l. Distance to water bodies. The following distances, measured along the path of water flow, shall be provided between the point of discharge from the VTA and the receiving water body.

(1) Designated use streams referenced in 567—subrule 61.3(5). A minimum distance of 500 feet or one-half foot distance per animal unit capacity of the open feedlot area which drains to the VTA, whichever is greater, shall be provided.

(2) All other uncrossable intermittent streams. A minimum distance of 200 feet shall be provided.

65.110(7) Stand-alone VTA.

a. Computer modeling. Results of predictive computer modeling for the proposed alternative technology system shall be used to determine suitability of the proposed site for the system and to predict performance of the alternative technology system as compared to the use of a 25-year, 24-hour runoff containment system, over a 25-year period. A summary of the computer modeling results shall be provided to the department.

b. Size. The computer model used to determine if the proposed AT system will meet the equivalent performance standard shall also be used to establish the minimum required size of the VTA. However, in no case shall the size of the VTA be less than the following:

(1) 50 percent of the total drainage area (feedlot and other) served if the soil permeability is from 0.6 to 2.0 inches per hour.

(2) 100 percent of the total drainage area (feedlot and other) served if the soil permeability is from 0.2 to 0.6 inches per hour.

c. Slope. The constructed VTA shall be level in one dimension and have a slight slope (maximum of 5 percent) in the other dimension.

d. Berming. The VTA must be bermed to prevent inflow of surface water from outside areas.

e. Spreaders. Settled open feedlot effluent must be discharged evenly across the top width of the VTA and allowed to slowly flow downslope through the VTA. Level spreaders

or other practices may be required to maintain uniform flow of settled open feedlot effluent across the width of the VTA as flow moves downslope through the VTA.

f. Soil permeability. Soil permeability within the VTA must be from 0.2 to 2.0 inches per hour throughout the soil profile to a depth of five feet. Soil permeability must be verified by conducting on-site or laboratory soil permeability testing.

g. Groundwater lowering system. The seasonal high-water table within the VTA must be capable of being lowered to a depth of four to five feet with a perimeter tile system installed outside of the VTA. Design information must be provided which demonstrates the adequacy of the proposed groundwater lowering system. The tile system must satisfy the following requirements:

(1) If the tile system does not have a surface outlet accessible on the property where the AT system is located, a device to allow monitoring of the water in the tile system and a device to allow shutoff of the flow in the tile system must be installed.

(2) Tile lines in the system must be installed horizontally at least 25 feet away from the outside toe of the berm of the VTA.

h. Tile system to enhance infiltration within the VTA. A tile system may be installed at the perimeter of the VTA cells to enhance infiltration within the VTA. The tile system must satisfy the following requirements:

(1) Tile lines shall be installed at the centerline of the berms of the VTA cells.

(2) The tile lines shall be constructed such that no settled open feedlot effluent can enter the lines except through infiltration through the soil profile.

(3) A shutoff valve and sampling point located downslope of the VTA cell shall be provided for each individual tile line. However, if multiple tile lines are brought together into a common tile line, a single shutoff valve and sampling point may be utilized.

(4) Monitoring of the tile lines must be conducted in accordance with the requirements of 65.104(9)“d”(2).

i. Depth to sands, gravels, or glacial outwash. A VTA is not allowed if the depth to sands, gravels, or glacial outwash is less than six feet. A soils investigation that documents sands found are in isolated sand lenses that will not have a significant impact on subsurface water flow or groundwater quality shall not prohibit use of the site.

j. Depth to bedrock. A minimum of ten feet of overburden or loose material must exist between the surface of the constructed VTA and underground bedrock.

k. Flooding. The VTA must be constructed in areas which are not subject to flooding more frequently than once in 25 years.

l. Distance to water bodies. The following distances, measured along the path of water flow, shall be provided between the point of discharge from the VTA and the receiving water body.

(1) Designated use streams referenced in 567—subrule 61.3(5). A minimum distance of 500 feet or one-half foot distance per animal unit capacity of the feedlot area which drains to the VTA, whichever is greater, shall be provided.

(2) All other uncrossable intermittent streams. A minimum distance of 200 feet shall be provided.

567—65.111(459A) Construction certification.

65.111(1) The owner of an open feedlot operation who is issued a construction permit for a settled open feedlot effluent basin or AT system as provided in rule 65.105(459A) on or after July 1, 2005, shall submit to the department a

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construction certification from a professional engineer certifying all of the following:

a. The basin or AT system was constructed in accordance with the design plans submitted to the department as part of an application for a construction permit pursuant to rule 65.107(459A). If the actual construction deviates from the approved design plans, the construction certification shall identify all changes and certify that the changes were consistent with all applicable standards of these rules.

b. The basin or AT system was inspected by the professional engineer after completion of construction and before commencement of operation.

65.111(2) A written record of an investigation for drainage tile lines, including the findings of the investigation and actions taken to comply with 65.109(1) or 65.110(3), shall be submitted as part of the construction certification.

567—65.112(459A) Nutrient management plan requirements.

65.112(1) The owner of an open feedlot operation which has an animal unit capacity of 1,000 animal units or more or which is required to be issued an NPDES permit shall develop and implement a nutrient management plan meeting the requirements of this rule by December 31, 2006. For the purpose of this rule, requirements pertaining to open feedlot effluent also apply to settled open feedlot effluent and settleable solids.

65.112(2) Not more than one open feedlot operation shall be covered by a single nutrient management plan.

65.112(3) A person shall not remove manure, process wastewater or open feedlot effluent from an open feedlot operation structure which is part of an open feedlot operation for which a nutrient management plan is required under this rule, unless the department approves a nutrient management plan as required in this rule.

65.112(4) The department shall not approve an application for a permit to construct a settled open feedlot effluent basin or AT system unless the owner of the open feedlot operation applying for approval submits a nutrient management plan together with the application for the construction permit as provided in rule 65.105(459A). The owner shall also submit proof that the owner has published a notice for public comment as provided in 65.112(7).

65.112(5) If a construction permit is required as provided in rule 65.105(459A), the department shall approve or disapprove the nutrient management plan as part of the construction permit application. If a construction permit is not required, the department shall approve or disapprove the nutrient management plan within 60 days from the date that the department receives the nutrient management plan.

65.112(6) Prior to approving or disapproving a nutrient management plan as required in this rule, the department may receive comments exclusively to determine whether the nutrient management plan is submitted according to procedures required by the department and that the nutrient management plan complies with the provisions of this rule.

65.112(7) Public notice.

a. The owner of the open feedlot operation shall publish a notice for public comment in a newspaper having a general circulation in the county where the open feedlot operation is or is proposed to be located and in the county where manure, process wastewater, or open feedlot effluent which originates from the open feedlot operation may be applied under the terms and conditions of the nutrient management plan.

b. The notice for public comment shall include all of the following:

(1) The name of the owner of the open feedlot operation submitting the nutrient management plan.

(2) The name of the township where the open feedlot operation is or is proposed to be located and the name of the township where manure, process wastewater, or open feedlot effluent originating from the open feedlot operation may be applied.

(3) The animal unit capacity of the open feedlot operation.

(4) The time when and the place where the nutrient management plan may be examined as provided in Iowa Code section 22.2.

(5) Procedures for providing public comment to the department. The notice shall also include procedures for requesting a public hearing conducted by the department. The department is not required to conduct a public hearing if it does not receive a request for the public hearing within ten days after the first publication of the notice for public comment as provided in this subrule. If such a request is received, the public hearing must be conducted within 30 days after the first date that the notice for public comment was published.

(6) A statement that a person may acquire information relevant to making comments under this subrule by accessing the department's Internet Web site. The notice for public comment shall include the address of the department's Internet Web site as required by the department.

65.112(8) A nutrient management plan shall include all of the following:

a. Restrictions on the application of open feedlot effluent based on all of the following:

(1) A phosphorus index of each field in the nutrient management plan, as defined in 65.17(17)"a," including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation. In addition, total phosphorus (as P₂O₅) available to be applied from the open feedlot operation shall be included.

(2) Calculations necessary to determine the land area required for the application of manure, process wastewater and open feedlot effluent from an open feedlot operation based on nitrogen or phosphorus use levels (as determined by phosphorus index) in order to obtain optimum crop yields according to a crop schedule specified in the nutrient management plan, and according to requirements specified in 65.17(4).

b. Information relating to the application of the manure, process wastewater and open feedlot effluent, including all of the following:

(1) Nutrient levels of the manure, process wastewater and open feedlot effluent.

(2) Application methods, the timing of the application, and the location of the land where the application occurs.

c. If the application is on land other than land owned or rented for crop production by the owner of the open feedlot operation, the plan shall include a copy of each written agreement executed by the owner of the open feedlot operation and the landowner or the person renting the land for crop production where the manure, process wastewater or open feedlot effluent may be applied.

d. An estimate of the manure, process wastewater and open feedlot effluent volume or weight produced by the open feedlot operation.

e. Information which shows all of the following:

(1) There is adequate storage for manure, process wastewater, stockpiled manure and open feedlot effluent, including procedures to ensure proper operation and maintenance of the storage structures.

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(2) The proper management of animal mortalities to prevent discharge of pollutants to surface water and to ensure that animals are not disposed of in an open feedlot operation structure or a treatment system that is not specifically designed to treat animal mortalities.

(3) Surface drainage prior to contact with an open feedlot structure is diverted, as appropriate, from the open feedlot operation.

(4) Animals kept in the open feedlot operation do not have direct contact with any waters of the United States.

(5) Chemicals or other contaminants handled on site are not disposed of in manure, process wastewater, an open feedlot operation structure or a treatment system that is not specifically designed to treat such chemicals or contaminants.

(6) Equipment used for the land application of manure, process wastewater or open feedlot effluent must be periodically inspected for leaks.

(7) Identification of specific records that will be maintained to document the implementation and management of the requirements in this subrule.

65.112(9) If an open feedlot operation uses an alternative technology system as provided in rule 65.110(459A), the nutrient management plan is not required to provide for settled open feedlot effluent that enters the AT system.

65.112(10) Current nutrient management plan, record keeping and inspections.

a. Current nutrient management plan. The owner of an open feedlot operation who is required to submit a nutrient management plan shall maintain a current nutrient management plan at the site of the open feedlot operation and shall make the current nutrient management plan available to the department upon request. If nutrient management practices change, a person required to submit a nutrient management plan shall make appropriate changes consistent with this rule. If values other than the standard table values are used for nutrient management plan calculations, the source of the values used shall be identified.

b. Record keeping. Records shall be maintained by the owner of a open feedlot operation who is required to submit a nutrient management plan. This recorded information shall be maintained for five years following the year of application or for the length of the crop rotation, whichever is greater. Records shall be maintained at the site of the open feedlot operation and shall be made available to the department upon request. Records to demonstrate compliance with the nutrient management plan shall include the following:

(1) Factors used to calculate the manure, process wastewater and open feedlot effluent application rate:

1. Optimum yield for the planned crop.
2. Types of nitrogen credits and amounts.
3. Remaining crop nitrogen needed.
4. Nitrogen content and first-year nitrogen availability of the manure, process wastewater and open feedlot effluent.
5. Phosphorus content of the manure, process wastewater and open feedlot effluent as required in 65.17(3)"i"(1) and (2). If an actual sample is used, documentation shall be provided.

(2) If phosphorus-based application rates are used, the following shall be included:

1. Crop rotation.
2. Phosphorus removed by crop harvest of that crop rotation.

(3) Maximum allowable manure, process wastewater and open feedlot effluent application rate.

(4) Actual manure, process wastewater and open feedlot effluent application information:

1. Method(s) of application when manure, process wastewater or open feedlot effluent from the open feedlot operation was applied.

2. Date(s) when the manure, process wastewater or open feedlot effluent from the open feedlot operation was applied.

3. Weather conditions at time of application and for 24 hours prior to and following the application.

4. Location of the field where the manure, process wastewater or open feedlot effluent from the open feedlot operation was applied, including the number of acres.

5. The manure, process wastewater or open feedlot effluent application rate.

6. Dates when application equipment was inspected.

(5) Date(s) and application rate(s) of commercial nitrogen and phosphorus on fields that received manure, process wastewater or open feedlot effluent. However, if the date and application rate information is for fields which are not owned for crop production or which are not rented or leased for crop production by the person required to keep records pursuant to this subrule, an enforcement action for noncompliance with a nutrient management plan or the requirements of this subrule shall not be pursued against the person required to keep records pursuant to this subrule or against any other person who relied on the date and application rate in records required to be kept pursuant to this subrule, unless that person knew or should have known that nitrogen or phosphorus would be applied in excess of maximum levels set forth in paragraph 65.17(1)"a." If nutrients are applied to fields not owned, rented or leased for crop production by the person required to keep records pursuant to this subrule, that person shall obtain from the person who owns, rents or leases those fields a statement specifying the planned commercial nitrogen and phosphorus fertilizer rates to be applied to each field receiving the nutrients.

(6) A copy of the current soil test laboratory results for each field in the nutrient management plan.

(7) All applicable records identified in 65.112(8)"e"(7).

c. Record inspection. The department may inspect an open feedlot operation at any time during normal working hours and may inspect the nutrient management plan and any records required to be maintained.

567—65.113(459A) Complaint investigations. Complaints of violations of Iowa Code chapter 455B or 459, or 2005 Iowa Code Supplement chapter 459A, or these rules, which are received by the department or are forwarded to the department by a county, following a county board of supervisors' determination that a complainant's allegation constitutes a violation, shall be investigated by the department if it is determined that the complaint is legally sufficient and an investigation is justified.

65.113(1) If after evaluating a complaint to determine whether the allegation may constitute a violation, without investigating whether the facts supporting the allegation are true or untrue, the county board of supervisors shall forward its finding to the department director.

65.113(2) A complaint is legally sufficient if it contains adequate information to investigate the complaint and if the allegation constitutes a violation, without an investigation of whether the facts supporting the allegation are true or untrue, of department rules, Iowa Code chapter 455B or 459, or 2005 Iowa Code Supplement chapter 459A, or environmental standards in regulations subject to federal law and enforced by the department.

65.113(3) The department in its discretion shall determine the urgency of the investigation, and the time and resources required to complete the investigation, based upon the cir-

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cumstances of the case, including the severity of the threat to the quality of surface water or groundwater.

65.113(4) The department shall notify the complainant and the alleged violator if an investigation is not conducted specifying the reason for the decision not to conduct an investigation.

65.113(5) The department will notify the county board of supervisors where the violation is alleged to have occurred before doing a site investigation unless the department determines that a clear, present and impending danger to the public health or environment requires immediate action.

65.113(6) The county board of supervisors may designate a county employee to accompany the department on the investigation of any site as a result of a complaint.

65.113(7) A county employee accompanying the department on a site investigation has the same right of access to the site as the department official conducting the investigation during the period that the county designee accompanies the department official.

65.113(8) Upon completion of an investigation, the department shall notify the complainant of the results of the investigation, including any anticipated, pending or complete enforcement action arising from the investigation. The department shall deliver a copy of the notice to the open feedlot operation that is the subject of the complaint, any alleged violators if different from the open feedlot operation and the county board of supervisors of the county where the violation is alleged to have occurred.

65.113(9) When a person who is a department official, an agent of the department, or a person accompanying the department official or agent enters the premises of an open feedlot operation, both of the following shall apply:

a. The person may enter at any reasonable time in and upon any private or public property to investigate any actual or possible violation of Iowa Code chapter 455B or 459, or 2005 Iowa Code Supplement chapter 459A, or these rules. However, the owner or person in charge shall be notified.

(1) If the owner or occupant of any property refuses admittance to the operation, or if prior to such refusal the director demonstrates the necessity for a warrant, the director may make application under oath or affirmation to the district court of the county in which the property is located for the issuance of a search warrant.

(2) In the application the director shall state that an inspection of the premises is mandated by the laws of this state or that a search of certain premises, areas, or things designated in the application may result in evidence tending to reveal the existence of violations of public health, safety, or welfare requirements imposed by statutes, rules or ordi-

nances established by the state or a political subdivision thereof. The application shall describe the area, premises, or thing to be searched, give the date of the last inspection if known, give the date and time of the proposed inspection, declare the need for such inspection, recite that notice of desire to make an inspection has been given to affected persons and that admission was refused if that be the fact, and state that the inspection has no purpose other than to carry out the purpose of the statute, ordinance, or regulation pursuant to which inspection is to be made. If an item of property is sought by the director, it shall be identified in the application.

(3) If the court is satisfied from the examination of the applicant, and of other witnesses, if any, and of the allegations of the application of the existence of the grounds of the application, or that there is probable cause to believe their existence, the court may issue such search warrant.

(4) In making inspections and searches pursuant to the authority of this rule, the director must execute the warrant:

1. Within ten days after its date.

2. In a reasonable manner, and any property seized shall be treated in accordance with the provisions of Iowa Code chapters 808, 809, and 809A.

3. Subject to any restrictions imposed by the statute, ordinance or regulation pursuant to which inspection is made.

b. The person shall comply with standard biosecurity requirements customarily required by the open feedlot operation which are necessary in order to control the spread of disease among an animal population.

567—65.114(455B,459A) Transfer of legal responsibilities or title. If title or legal responsibility for a permitted open feedlot operation and its open feedlot operation structure is transferred, the person to whom title or legal responsibility is transferred shall be subject to all terms and conditions of the permit and these rules. The person to whom the permit was issued and the person to whom title or legal responsibility is transferred shall notify the department of the transfer of legal responsibility or title of the operation within 30 days of the transfer. Within 30 days of receiving a written request from the department, the person to whom legal responsibility is transferred shall submit to the department all information needed to modify the permit to reflect the transfer of legal responsibility.

These rules are intended to implement Iowa Code sections 455B.171 to 455B.191, 459.314, and 459.601 and 2005 Iowa Code Supplement chapter 459A.

ITEM 15. Amend **567—Chapter 65, Appendix A**, as follows:

APPENDIX A
MANURE OPEN FEEDLOT EFFLUENT CONTROL ALTERNATIVES
FOR OPEN FEEDLOTS FEEDLOT OPERATIONS

Introduction: Water pollution control requirements for animal feeding operations are given in ~~Chapter 65 of the rules of the Iowa department of natural resources 567— 65.101(459A).~~ Under these rules, open feedlots meeting the operation NPDES permit application requirements of rule 567—65.4-104(455B,459 459A) must also comply with the minimum ~~manure open feedlot effluent~~ control requirements of subrule ~~65.2(2) 65.101(2).~~ Subrule ~~65.2(2) 65.101(2)~~ requires that all feedlot runoff and other ~~manure open feedlot effluent~~ flows resulting from precipitation events less than or equal to the 25-year, 24-hour ~~rainfall~~ precipitation event be collected and land-applied. *For the purpose of this appendix, open feedlot effluent includes manure, process wastewater, settled open feedlot effluent and settleable solids.*

This appendix describes five feedlot runoff control systems that meet the requirements of subrule ~~65.2(2) 65.101(2).~~ The systems differ in the volume of ~~manure open feedlot effluent~~ storage provided and in the frequency of ~~manure open feedlot effluent~~ application. In general, the time interval between required applications increases with increased storage volume.

A feedlot operator who constructs and operates a ~~manure an open feedlot effluent~~ control facility in accordance with the requirements of any of these five systems will not have additional ~~manure open feedlot effluent~~ control requirements imposed, unless

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~~manure open feedlot effluent~~ discharges from the facility cause state water quality standards violations. In describing the five systems, the major features of each are first reviewed, followed by detailed information on the construction and operation requirements of the system. The system descriptions are presented in this appendix as follows:

System	Pages
System 1: One Manure Open Feedlot Effluent Application Period Per Year	33-35 88-90
System 2: July and November October Manure Open Feedlot Effluent Application	35-37 90-92
System 3: April, July, and November October Manure Open Feedlot Effluent Application	37-39 92-94
System 4: Application After Each Significant Precipitation Event	39-41 94-96
System 5: April/May and October/November Manure Open Feedlot Effluent Application	41-43 96-98
Figures 1-4	44-45 99-100

SYSTEM 1: ONE MANURE OPEN FEEDLOT EFFLUENT APPLICATION PERIOD PER YEAR

MAJOR SYSTEM FEATURES:

- Adequate capacity must be provided to collect and store the average annual runoff from all feedlot and nonfeedlot areas which drain into the ~~manure open feedlot effluent~~ control system (additional storage is required if ~~process waters or manure open feedlot effluent~~ from other sources also ~~drain drains~~ into the control system).
- Collected ~~manure open feedlot effluent~~ must be removed from the control system and land-applied at least once annually (interval between successive applications cannot exceed 12 months).

DETAILED SYSTEM REQUIREMENTS:

~~Manure Open Feedlot Effluent~~ Control System: The ~~manure open feedlot effluent~~ control system must be constructed to meet or exceed the following requirements:

1. Solids Settling Facilities: Solids settling facilities which meet or exceed the requirements of subrule ~~65.2(1)~~ 65.101(1) must precede the feedlot runoff control system.
2. Feedlot Runoff Control System: The feedlot runoff control system shall, as a minimum, have adequate capacity to store the total wastewater volume determined by summing the following:
 - A. The volume determined by multiplying the unpaved feedlot area which drains into the control system by the appropriate runoff value from Figure 1.
 - B. The volume determined by multiplying the paved feedlot area which drains into the control system by 1.5 times the appropriate runoff value from Figure 1.
 - C. The volume determined by multiplying the total area of cropland, pasture and woodland draining into the control system by the greater of the following:
 - The amount of runoff expected from these areas as a result of the 25-year, 24-hour precipitation event.*
 - The average annual runoff expected from these areas.*
 - D. The volume determined by multiplying the total roof, farmstead, and driveway area draining into the control system by the average annual runoff expected from these areas.*
 - E. The volume of process wastewater which drains into the control system during a 12-month period.
 - F. The volume of ~~manure open feedlot effluent~~ from other sources which discharges into the control system during a 12-month period.

*Expected 25-year, 24-hour and average annual runoff values shall be determined using runoff prediction methodologies of the U.S. Soil Conservation Service NRCS (or equivalent methodologies).

~~Manure Open Feedlot Effluent~~ Application Requirements: ~~Manure Open feedlot effluent~~ must be removed from the ~~manure open feedlot effluent~~ control system and land-applied in accordance with the following requirements:

1. Solids Settling Facilities: Collected *settleable* solids must be removed from the solids settling facilities as necessary to maintain adequate capacity to handle future runoff events. As a minimum, *settleable* solids shall be removed at least once annually.
2. Feedlot Runoff Control System: Accumulated ~~manure open feedlot effluent~~ shall be removed from the feedlot runoff control system and disposed of by land application at least once annually. The interval between successive application periods shall not exceed 12 months.

During application periods, land application shall be conducted at rates sufficient to ensure complete removal of accumulated ~~manure open feedlot effluent~~ from the runoff control system in ten or fewer application days. ~~Manure Open feedlot effluent~~ removal is considered complete when the ~~manure open feedlot effluent~~ remaining in the runoff control system occupies less than 10 percent of the system's design ~~manure open feedlot effluent~~ storage volume.

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Land application of ~~manure~~ *open feedlot effluent* shall be conducted on days when weather and soil conditions are suitable. Weather and soil conditions are normally considered suitable for ~~manure~~ *open feedlot effluent* application if:

- Land application areas are not frozen or snow-covered.
- Temperatures during application are greater than 32 degrees Fahrenheit.
- Precipitation has not exceeded 0.05 inch per day for each of the three days immediately preceding application and no precipitation is occurring on the day of application.

SYSTEM 2: JULY AND NOVEMBER ~~OCTOBER~~ MANURE OPEN FEEDLOT EFFLUENT APPLICATION

MAJOR SYSTEM FEATURES:

- Adequate capacity must be provided to collect and store the average runoff expected to occur over the ~~eight~~ *nine*-month period from ~~December~~ *November* 1 through July 31 from all feedlot and nonfeedlot areas which drain into the ~~manure~~ *open feedlot effluent* control system (additional storage is required if ~~process waters or~~ *manure open feedlot effluent* from other sources also ~~drain~~ *drains* into the control system).
- Collected ~~manure~~ *open feedlot effluent* may be removed from the control system and land-applied during any period of the year that conditions are suitable. While application during other periods will minimize the need for July and ~~November~~ *October* application, sufficient ~~manure~~ *open feedlot effluent* must still be disposed of during July and ~~November~~ *October* to reduce the volume of ~~manure~~ *open feedlot effluent* remaining in the control system during these months to less than 10 percent of the system's design ~~manure~~ *open feedlot effluent* storage volume.

DETAILED SYSTEM REQUIREMENTS:

~~Manure~~ *Open Feedlot Effluent* Control System: The ~~manure~~ *open feedlot effluent* control system must be constructed to meet or exceed the following requirements:

1. Solids Settling Facilities: ~~Manure~~ *Open feedlot effluent* solids settling facilities which meet or exceed the requirements of subrule ~~65.2(4)~~ *65.101(1)* must precede the feedlot runoff control system.
2. Feedlot Runoff Control System: The feedlot runoff control system shall, as a minimum, have adequate capacity to store the total wastewater volume determined by summing the following:
 - A. The volume determined by multiplying the unpaved feedlot area which drains into the control system by the appropriate runoff value from Figure 2.
 - B. The volume determined by multiplying the paved feedlot area which drains into the control system by 1.5 times the appropriate runoff value from Figure 2.
 - C. The volume determined by multiplying the total area of cropland, pasture and woodland draining into the control system by the greater of the following:
 - The amount of runoff expected from these areas as a result of the 25-year, 24-hour precipitation event.*
 - The average runoff expected to occur from these areas during the ~~eight~~ *nine*-month period from ~~December~~ *November* 1 to July 31.*
 - D. The volume determined by multiplying the total roof, farmstead and driveway area draining into the control system by the average runoff expected to occur from these areas during the ~~eight~~ *nine*-month period from ~~December~~ *November* 1 to July 31.*
 - E. The volume of process wastewater which drains into the control system during the ~~eight~~ *nine*-month period from ~~December~~ *November* 1 through July 31.
 - F. The volume of ~~manure~~ *open feedlot effluent* from other sources which discharges into the control system during the ~~eight~~ *nine*-month period from ~~December~~ *November* 1 through July 31.

*Expected 25-year, 24-hour runoff and average runoff for the ~~eight~~ *nine*-month period from ~~December~~ *November* 1 through July 31 shall be determined using runoff prediction methodologies of the U.S. Soil Conservation Service NRCS (or equivalent methodologies).

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Manure Open Feedlot Effluent Application Requirements: *Manure Open feedlot effluent* must be removed from the *manure open feedlot effluent* control system and land-applied in accordance with the following requirements:

1. Solids Settling Facilities: Collected *settleable* solids must be removed from the solids settling facilities as necessary to maintain adequate capacity to handle future runoff events. As a minimum, *settleable* solids shall be removed at least once annually.
2. Feedlot Runoff Control System:

A. A feedlot operator must comply with the following *manure open feedlot effluent* application requirements if application operations are limited to the months of July and ~~November~~ *October*.

During these months, land application shall be conducted at rates sufficient to ensure complete removal of accumulated *manure open feedlot effluent* from the runoff control system in ten or fewer application days. *Manure Open feedlot effluent* removal is considered complete when the *manure open feedlot effluent* remaining in the runoff control system occupies less than 10 percent of the system's design *manure open feedlot effluent* storage capacity.

During July and ~~November~~ *October*, *manure open feedlot effluent* application operations shall be initiated on the first day that conditions are suitable for land application of *manure open feedlot effluent*, and application must continue on subsequent days that suitable conditions exist. If unfavorable weather conditions prevent complete application of *manure open feedlot effluent* to be accomplished during July or ~~November~~ *October*, application must be continued into the following month. *Manure Open feedlot effluent* application operations may cease when complete application has been achieved.

Weather and soil conditions are normally considered suitable for land application of *manure open feedlot effluent* if:

- Land application areas are not frozen or snow-covered.
- Temperatures during application are greater than 32 degrees Fahrenheit.
- Precipitation has not exceeded 0.05 inch per day for each of the three days immediately preceding application and no precipitation is occurring on the day of application.

B. A feedlot operator may dispose of accumulated *manure open feedlot effluent* during any period of the year that conditions are suitable. While application during other periods will minimize the need for application during July and ~~November~~ *October*, the feedlot operator will still need to dispose of sufficient *manure open feedlot effluent* during July and ~~November~~ *October* to reduce the *manure open feedlot effluent* volume remaining in the runoff control system during these months to less than 10 percent of the system's design *manure open feedlot effluent* storage capacity.

A feedlot operator who does not limit *manure open feedlot effluent* application operations to the months of July and ~~November~~ *October* is not required to comply with the specific *manure open feedlot effluent* application requirements which apply when application is limited to those months. However, this does not relieve the feedlot operator of the responsibility to conduct application operations at rates and times which are sufficient to ensure that the *manure open feedlot effluent* volume remaining in the runoff control system during July and ~~November~~ *October* will be reduced to less than 10 percent of the system's design *manure open feedlot effluent* storage capacity.

SYSTEM 3: APRIL, JULY AND ~~NOVEMBER~~ *OCTOBER* *MANURE OPEN FEEDLOT EFFLUENT* APPLICATION

MAJOR SYSTEM FEATURES:

- Adequate capacity must be provided to collect and store the average runoff expected to occur during the ~~five~~ *six*-month period from ~~December~~ *November* 1 through April 30 from all feedlot and nonfeedlot areas which drain into the *manure open feedlot effluent* control system (additional storage is required if ~~process waters or~~ *manure open feedlot effluent* from other sources also ~~drain~~ *drains* into the control system).
- Collected *manure open feedlot effluent* may be removed from the control system and land-applied during any period of the year that conditions are suitable. While application during other periods will minimize the need for application during the specified application months, sufficient *manure open feedlot effluent* must still be disposed of during April, July and ~~November~~ *October* to reduce the volume of *manure open feedlot effluent* remaining in the control system during these months to less than 10 percent of the system's design *manure open feedlot effluent* storage volume.

DETAILED SYSTEM REQUIREMENTS:

Manure Open Feedlot Effluent Control System: The *manure open feedlot effluent* control system must be constructed to meet or exceed the following requirements:

1. Solids Settling Facilities: ~~Manure solids~~ *Solids* settling facilities which meet or exceed the requirements of subrule ~~65.2(1)~~ *65.101(1)* must precede the feedlot runoff control system.
2. Feedlot Runoff Control System: The feedlot runoff control system shall, as a minimum, have adequate capacity to store the total wastewater volume determined by summing the following:

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A. The volume determined by multiplying the unpaved feedlot area which drains into the control system by the appropriate runoff value from Figure 3.

B. The volume determined by multiplying the paved feedlot area which drains into the control system by 1.5 times the appropriate runoff value from Figure 3.

C. The volume determined by multiplying the total area of cropland, pasture and woodland draining into the control system by the greater of the following:

- The amount of runoff expected from these areas as a result of the 25-year, 24-hour precipitation event.*
- The average annual runoff expected to occur from these areas during the ~~five~~ *six*-month period from ~~December~~ *November* 1 to April 30.*

D. The volume determined by multiplying the total roof, farmstead, and driveway area draining into the control system by the average runoff expected to occur from these areas during the ~~five~~ *six*-month period from ~~December~~ *November* 1 to April 30.*

E. The volume of process wastewater which drains into the control system during the ~~five~~ *six*-month period from ~~December~~ *November* 1 through April 30.

F. The volume of ~~manure~~ *open feedlot effluent* from other sources which discharges into the control system during the ~~five~~ *six*-month period from ~~December~~ *November* 1 through April 30.

*Expected 25-year, 24-hour runoff and average runoff for the ~~five~~ *six*-month period from ~~December~~ *November* 1 through April 30 shall be determined using runoff prediction methodologies of the U.S. Soil Conservation Service *NRCS* (or equivalent methodologies).

Manure Open Feedlot Effluent Application Requirements: ~~Manure~~ *Open feedlot effluent* must be removed from the ~~manure~~ *open feedlot effluent* control system and land-applied in accordance with the following requirements:

1. Solids Settling Facilities: Collected *settleable* solids must be removed from the solids settling facilities as necessary to maintain adequate capacity to handle future runoff events. As a minimum, *settleable* solids shall be removed at least once annually.

2. Feedlot Runoff Control System:

A. A feedlot operator must comply with the following ~~manure~~ *open feedlot effluent* application requirements if application operations are limited to the months of April, July and ~~November~~ *October*.

During these months, land application shall be conducted at rates sufficient to ensure complete removal of accumulated ~~manure~~ *open feedlot effluent* from the runoff control system in ten or fewer application days. ~~Manure~~ *Open feedlot effluent* removal is considered complete when the ~~manure~~ *open feedlot effluent* remaining in the runoff control system occupies less than 10 percent of the system's design ~~manure~~ *open feedlot effluent* storage capacity.

During April, July and ~~November~~ *October*, ~~manure~~ *open feedlot effluent* application operations shall be initiated on the first day that conditions are suitable for land application of ~~manure~~ *open feedlot effluent*, and application must continue on subsequent days that suitable conditions exist. If unfavorable weather conditions prevent complete application of ~~manure~~ *open feedlot effluent* to be accomplished during any of these months, ~~manure~~ *open feedlot effluent* application must be continued into the following month. ~~Manure~~ *Open feedlot effluent* application operations may cease when complete application has been achieved.

Weather and soil conditions are normally considered suitable for land application of ~~manure~~ *open feedlot effluent* if:

- Land application areas are not frozen or snow-covered.
- Temperatures during application are greater than 32 degrees Fahrenheit.
- Precipitation has not exceeded 0.05 inch per day for each of the three days immediately preceding application and no precipitation is occurring on the day of application.

B. A feedlot operator may dispose of accumulated ~~manure~~ *open feedlot effluent* during any period of the year that conditions are suitable. While application during other periods will minimize the need for application during April, July and ~~November~~ *October*, the feedlot operator will still need to dispose of sufficient ~~manure~~ *open feedlot effluent* during April, July and ~~November~~ *October* to reduce the ~~manure~~ *open feedlot effluent* volume remaining in the runoff control system during these months to less than 10 percent of the system's design ~~manure~~ *open feedlot effluent* storage capacity.

A feedlot operator who does not limit ~~manure~~ *open feedlot effluent* application operations to the months of April, July and ~~November~~ *October* is not required to comply with the specific ~~manure~~ *open feedlot effluent* application requirements which apply when application is limited to those months. However, this does not relieve the feedlot operator of the responsibility to conduct application operations at rates and times which are sufficient to ensure that the ~~manure~~ *open feedlot effluent* volume remaining in the runoff control system during April, July and ~~November~~ *October* will be reduced to less than 10 percent of the system's design ~~manure~~ *open feedlot effluent* storage capacity.

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SYSTEM 4: *OPEN FEEDLOT EFFLUENT* APPLICATION AFTER EACH SIGNIFICANT PRECIPITATION EVENT

MAJOR SYSTEM FEATURES:

- Adequate capacity must be provided to collect and store the runoff expected to occur as a result of the 25-year, 24-hour precipitation event from all feedlot and nonfeedlot areas which drain into the ~~manure~~ *open feedlot effluent* control system (additional storage is required if ~~process waters or manure~~ *open feedlot effluent* from other sources also ~~drain~~ *drains* into the control system).
- Collected ~~manure~~ *open feedlot effluent* must be removed from the control system and land-applied whenever the available (unoccupied) storage capacity remaining in the control system is less than 90 percent of that needed to store runoff from the 25-year, 24-hour precipitation event; land application must begin on the first day that conditions are suitable and must continue until application is completed.

DETAILED SYSTEM REQUIREMENTS:

~~Manure~~ *Open Feedlot Effluent* Control System: The ~~manure~~ *open feedlot effluent* control system must be constructed to meet or exceed the following requirements:

1. Solids Settling Facilities: ~~Manure~~ *solids* *Solids* settling facilities which meet or exceed the requirements of subrule 65.2(1) 65.101(1) must precede the feedlot runoff control system.
2. Feedlot Runoff Control System: The feedlot runoff control system shall, as a minimum, have adequate capacity to store the total wastewater volume determined by summing the following:
 - A. The volume determined by multiplying the total feedlot area which drains into the control system by the amount of runoff expected to occur from this area as a result of the 25-year, 24-hour precipitation event.*
 - B. The volume determined by multiplying the total area of cropland, pasture and woodland draining into the control system by the amount of runoff expected to occur from these areas as a result of the 25-year, 24-hour precipitation event.*
 - C. The volume determined by multiplying the total roof, farmstead and driveway area draining into the control system by the amount of runoff expected to occur from these areas as a result of the 25-year, 24-hour precipitation event.*
 - D. The volume of process wastewater which drains into the control system during the ~~five~~ *six*-month period from ~~December~~ *November* 1 through April 30.
 - E. The volume of ~~manure~~ *open feedlot effluent* from other sources which discharges into the control system during the ~~five~~ *six*-month period from ~~December~~ *November* 1 through April 30.

*Expected 25-year, 24-hour runoff shall be determined by using runoff prediction methodologies of the U.S. Soil Conservation Service *NRCS* (or equivalent methodologies).

~~Manure~~ *Open Feedlot Effluent* Application Requirements: ~~Manure~~ *Open feedlot effluent* must be removed from the ~~manure~~ *open feedlot effluent* control system and land-applied in accordance with the following requirements:

1. Solids Settling Facilities: Collected *settleable* solids must be removed from the solids settling facilities as necessary to maintain adequate capacity to handle future runoff events. As a minimum, *settleable* solids shall be removed at least once annually.
2. Feedlot Runoff Control System: Accumulated ~~manure~~ *open feedlot effluent* shall be removed from the feedlot runoff control system and disposed of by land application following each precipitation or snowmelt runoff event which results in significant ~~manure~~ *open feedlot effluent* accumulations in the control system. ~~Manure~~ *Open feedlot effluent* accumulations will be considered significant whenever the available (unoccupied) storage capacity remaining in the control system is less than 90 percent of that required to store the runoff from the 25-year, 24-hour precipitation event.

Once the available storage capacity remaining in the ~~manure~~ *open feedlot effluent* control system is reduced to the point that ~~manure~~ *open feedlot effluent* application is necessary, ~~manure~~ *open feedlot effluent* application operations must be initiated on the first day that conditions are suitable for land application of ~~manure~~ *open feedlot effluent*, and application must continue on subsequent days that suitable conditions exist. Application operations may cease when the storage capacity available in the control system has been restored to greater than 90 percent of that required to store runoff from the 25-year, 24-hour precipitation event.

During application periods, land application shall be conducted at rates sufficient to ensure complete removal of accumulated ~~manure~~ *open feedlot effluent* from the control system in ten or fewer application days.

Weather and soil conditions are normally considered suitable for land application of ~~manure~~ *open feedlot effluent* if:

- Land application areas are not frozen or snow-covered.
- Temperatures during application are greater than 32 degrees Fahrenheit.
- Precipitation has not exceeded 0.05 inch per day for each of the three days immediately preceding application and no precipitation is occurring on the day of application.

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SYSTEM 5: APRIL/MAY AND OCTOBER/NOVEMBER *OPEN FEEDLOT EFFLUENT* APPLICATION

MAJOR SYSTEM FEATURES:

- Adequate capacity must be provided to collect and store the average runoff expected to occur over the eight-month period from October 1 through May 31 from all feedlot and nonfeedlot areas which drain into the ~~manure open feedlot effluent~~ control system (additional storage is required if ~~process waters or manure open feedlot effluent~~ from other sources also drain into the control system).
- Collected ~~manure open feedlot effluent~~ may be removed from the control system and land-applied during any period of the year that conditions are suitable. While application during other periods will minimize the need for application during the April/May and the October/November periods, sufficient ~~manure open feedlot effluent~~ must still be disposed of during each of these two-month periods to reduce the volume of ~~manure open feedlot effluent~~ remaining in the control system during these periods to less than 10 percent of the system's design ~~manure open feedlot effluent~~ storage volume.

DETAILED SYSTEM REQUIREMENTS:

~~Manure Open Feedlot Effluent~~ Control System: The ~~manure open feedlot effluent~~ control system must be constructed to meet or exceed the following requirements:

1. Solids Settling Facilities: ~~Manure Open feedlot effluent~~ solids settling facilities which meet or exceed the requirements of subrule ~~65.2(4)~~ 65.101(1) must precede the feedlot runoff control system.
2. Feedlot Runoff Control System: The feedlot runoff control system shall, as a minimum, have adequate capacity to store the total ~~wastewater open feedlot effluent~~ volume determined by summing the following:
 - A. The volume determined by multiplying the unpaved feedlot area which drains into the control system by the appropriate runoff value from Figure 4.
 - B. The volume determined by multiplying the paved feedlot area which drains into the control system by 1.5 times the appropriate runoff value from Figure 4.
 - C. The volume determined by multiplying the total area of cropland, pasture and woodland draining into the control system by the greater of the following:
 - The amount of runoff expected from these areas as a result of the 25-year, 24-hour precipitation event.*
 - The average runoff expected to occur from these areas during the eight-month period from October 1 to May 31.*
 - D. The volume determined by multiplying the total roof, farmstead, and driveway draining into the control system by the average runoff expected to occur from these areas during the eight-month period from October 1 to May 31.*
 - E. The volume of process wastewater which drains into the control system during the eight-month period from October 1 through May 31.
 - F. The volume of ~~manure open feedlot effluent~~ from other sources which discharges into the control system during the eight-month period from October 1 through May 31.

*Expected 25-year, 24-hour runoff and average runoff for the eight-month period from October 1 through May 31 shall be determined using runoff prediction methodologies of the U.S. Soil Conservation Service NRCS (or equivalent methodologies).

~~Manure Open Feedlot Effluent~~ Application Requirements: ~~Manure Open feedlot effluent~~ must be removed from the ~~manure open feedlot effluent~~ control system and land-applied in accordance with the following requirements:

1. Solids Settling Facilities: Collected *settleable* solids must be removed from the solids settling facilities as necessary to maintain adequate capacity to handle future runoff events. As a minimum, *settleable* solids shall be removed at least once annually.
2. Feedlot Runoff Control System: At a minimum, accumulated ~~manure open feedlot effluent~~ shall be removed from the feedlot runoff control system and disposed of by land application during the periods April 1 through May 31 and October 1 through November 30.

During each of these periods, land application shall be conducted at rates sufficient to ensure complete removal of accumulated ~~manure open feedlot effluent~~ from the runoff control system in ten or fewer application days. ~~Manure Open feedlot effluent~~ removal is considered complete when the ~~manure open feedlot effluent~~ remaining in the runoff control system occupies less than 10 percent of the system's design ~~manure open feedlot effluent~~ storage capacity.

A feedlot operator may dispose of accumulated ~~manure open feedlot effluent~~ during any period of the year that conditions are suitable. While application during other periods will minimize the need for application during the April/May and October/November periods, the feedlot operator will still need to dispose of sufficient ~~manure open feedlot effluent~~ during these periods to reduce the ~~manure open feedlot effluent~~ volume remaining in the runoff control system during these periods to less than 10 percent of the system's design ~~manure open feedlot effluent~~ storage capacity.

Land application of ~~manure open feedlot effluent~~ shall be conducted on days when weather and soil conditions are suitable. Weather and soil conditions are normally considered suitable for ~~manure open feedlot effluent~~ application if:

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- Land application areas are not frozen or snow-covered.
- Temperatures during application are greater than 32 degrees Fahrenheit.
- Precipitation has not exceeded 0.05 inch per day for each of the three days immediately preceding application and no precipitation is occurring on the day of application.

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[Published 4/12/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/12/06.

ARC 5044B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission adopts amendments to Chapter 134, "Certification of Groundwater Professionals," and Chapter 135, "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks," Iowa Administrative Code.

The amendments to Chapter 134 establish a compliance inspector certification program to be administered by the Department of Natural Resources. The amendments set forth minimum qualifications for education and experience, training requirements, and provisions for certification suspension and revocation. The Department has arrived at an initial application fee but will study costs to adjust the fee to cover actual costs.

The amendment to Chapter 135 requires owners and operators to have their underground storage tank systems inspected biennially for compliance using a Department-certified compliance inspector. The amendment will allow the Department to more effectively audit and target its inspection program as well as assist owners and operators to maintain consistent compliance with Department operation and maintenance rules.

The third-party inspection program has been developed as the result of a series of meetings with representatives for petroleum marketers, the UST insurance community, the environmental community and other stakeholders, with a common objective of increasing compliance and preventing leaks from USTs.

Notice of Intended Action for these amendments was published in the November 9, 2005, Iowa Administrative Bulletin as **ARC 4653B**.

The Department held public hearings in Denison, Coralville and Des Moines. Twelve written and oral comments were received. The main concerns were about the frequency and cost of the inspections and about not allowing inspectors to inspect sites of the inspectors' employer or sites where the inspectors installed or serviced the equipment.

The frequency of inspections in the proposed amendments was yearly. Comments ranged from supporting yearly inspections to extending the frequency of inspections to every three years. The recent federal energy bill does contain a requirement that, after August 2007, UST sites must be inspected at a minimum of every three years. A number of stakeholders included annual inspections in their recommendations to prevent releases and foster environmental protection. Subsequent discussions with stakeholders resulted in a general consensus to require that UST sites be inspected every two years. The first inspection must be completed no later

than December 31, 2007, and subsequent inspections must be completed within 24 months of the prior inspection and must be separated by at least 6 months. With the support of stakeholders, the Environmental Protection Commission has instructed the Department to conduct a study of the two-year inspection cycle and prepare a report no later than December 31, 2010.*

The Notice of Intended Action had a provision prohibiting inspection by a third party employed by the owner/operator, financially controlled by the owner/operator or who had previously installed the UST equipment because of the concern for impartiality of the UST inspector and the accuracy of compliance inspections. Some commenters noted that multiple parties have been involved in installing and repairing equipment and that restricting installers from inspecting installations they have worked on could result in a shortage of inspectors and difficulty in determining who is a qualified inspector and who is not. These commenters also wanted to use an installer in whom they had confidence. Larger firms wanted to be able to use their own company inspectors who are more familiar with their operations and who can be integrated into the firms' environmental compliance management systems.

After considering the comments, the Commission chose to remove these restrictions on compliance inspectors. As long as the Department maintains adequate personnel to audit compliance inspectors, conduct independent inspections and take disciplinary action as appropriate, there should be mini-

* The Department inadvertently failed to include the correct revisions to subrule 135.20(1) with regard to the two-year inspection cycle. The preamble correctly describes the intended policy, which after January 1, 2008, would require compliance inspections to be completed within a 24-month rolling cycle with a minimum separation of six months between inspections. The current subrule is objectionable because it does not specify that inspections must be completed within two years. The current language could be interpreted to allow inspections to be conducted as much as three to four years apart, which is clearly not the intent. The Department intends to initiate a Notice of Intended Action within the next six months to correct this mistake. Because the inspection frequency cycle does not begin until January 1, 2008, the Department does not believe the regulated public will be prejudiced by the delay in making the correction. The intended language for subrule 135.20(1) is as follows:

135.20(1) The owner or operator must have the UST system inspected and an inspection report submitted to the department by an UST compliance inspector certified by the department under 567—Chapter 134. An initial compliance site inspection shall be conducted no later than December 31, 2007. All subsequent compliance site inspections shall be conducted within 24 months of the prior site inspection. Compliance site inspections must be separated by at least 6 months.

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mal problems. As an additional safeguard, the amendments require that the Department receive prior notice identifying the site inspector and the date of the inspection. These provisions should help the Department to audit closely those situations where a conflict of interest may arise. Self-inspection has been used in other environmental programs within the Department.

The following additional changes from the Notice of Intended Action have been made:

Rule 567—134.7(455B) was revised to clarify that one of the certification requirements for UST compliance inspectors is that they be licensed as UST installers or installer inspectors under the Petroleum Underground Storage Tank Fund Board (UST Board) rules in 591—Chapter 15. However, exception language was added to clarify that the OSHA requirements applicable to UST Board-licensed installers and inspectors as provided in 591—subrule 15.3(4) will not be a certification requirement applicable to UST compliance inspectors. The content of Noticed rule 567—134.8(455B) was incorporated into 567—134.7(455B); therefore, rule 567—134.8(455B) was deleted, and subsequent rules were renumbered accordingly.

Renumbered subrule 134.9(3) was amended to reduce the certification application fee from \$500 to \$150 and to establish a renewal application fee of \$50.

Renumbered rule 567—134.12(455B) was amended to require “professional” liability insurance rather than “environmental” liability insurance, and the minimum coverage requirement was raised from \$250,000 to \$1 million per occurrence and in the aggregate.

Renumbered rule 567—134.14(455B) was revised to clarify the inspection process. The inspection criteria, which had been included in Noticed subrule 135.20(2), were moved into renumbered rule 567—134.14(455B). This change clarifies that it is the duty of the inspector to satisfy the inspection criteria, rather than the duty of the owner and operator. The revised rule also clarifies the inspection process by more clearly defining requirements for prior notice to the Department, initial inspection reporting to the owner and operator, and the process for inspectors to electronically submit a final inspection report documenting corrective actions taken by the owner or operator. The rule establishes requirements for inspectors to advise owners and operators of specific deficiencies and violations, what actions must be taken to correct the violations, and applicable time periods to complete corrective action. The rule specifically requires inspectors to advise owners and operators of their duty to report and respond to suspected releases.

The revisions in renumbered subrule 134.14(2) clarify the process by which inspection results will be electronically submitted to the Department through Internet access and establish a compatible platform using XML language. The electronic submittal of the inspection reports will allow the Department to query the inspection reports for abnormalities to target potential problems with inspectors.

A summary of the rule comments with response is available from the Department.

These amendments are intended to implement Iowa Code section 455B.474.

These amendments shall become effective May 17, 2006. The following amendments are adopted.

ITEM 1. Amend **567—Chapter 134**, title, as follows:

CHAPTER 134
CERTIFICATION OF GROUNDWATER
PROFESSIONALS AND UNDERGROUND STORAGE
TANK (UST) COMPLIANCE INSPECTORS

ITEM 2. Amend **567—Chapter 134** by adopting the following **new** heading to precede rule 567—134.1(455G):

PART A
CERTIFICATION OF GROUNDWATER PROFESSIONALS

ITEM 3. Amend **567—Chapter 134** by adopting the following **new** heading to precede rule 567—134.6(455B):

PART B
CERTIFICATION OF UST COMPLIANCE INSPECTORS

ITEM 4. Adopt the following **new** rules:

567—134.6(455B) Definition.

“UST compliance inspector” means a person who inspects a regulated underground storage tank (UST) to satisfy the requirements of 567—135.20(455B) for compliance with UST technical standards in 567—Chapter 135.

567—134.7(455B) Certification requirements for UST compliance inspectors. A person retained by an owner or operator of an UST facility for the purpose of establishing compliance with the annual UST compliance inspection required by the department under 567—135.20(455B) must hold a current UST compliance inspector certification issued by the department. Inspector certification will be issued by the department only to a person who:

1. Is an Iowa-licensed UST installer or installation inspector under 591—Chapter 15, except that the requirement as set forth under 591—subrule 15.3(4) shall not be applicable to a certified UST compliance inspector.
2. Attends the required training approved by the department as provided in 567—134.10(455B).
3. Achieves a passing grade of 85 percent on a certification examination administered or approved by the department as provided in 567—134.10(455B).
4. Submits an accurate and complete application.
5. Is not found to be in violation of this chapter and has not had a certification revoked by the department pursuant to 567—134.16(455B) or by the underground storage tank fund board pursuant to 591—Chapter 15.

567—134.8(455B) Temporary certification.

134.8(1) Until training and testing procedures are developed, the department may issue a temporary inspector certification to any person who:

- a. Is an Iowa-licensed installer or installation inspector as provided in 567—134.7(455B), numbered paragraph “1.”
- b. Completes the U.S. EPA UST Web-based training modules: “Introduction to the Underground Storage Tanks (UST) Program” and “Basic UST Inspector Training” with a minimum passing grade of 85 percent.

134.8(2) A person issued a temporary UST compliance inspector certification must complete the approved training and pass the examination in accordance with 567—134.10(455B) by April 1, 2007. Failure to achieve a passing grade on the examination before April 1, 2007, will result in revocation of temporary certification.

567—134.9(455B) Application for inspector certification.

134.9(1) The applicant shall be an individual.

134.9(2) An applicant for inspector certification shall submit, in addition to all applicable fees, an application on forms provided by the department. The application shall contain the following information:

- a. Evidence that the applicant meets the experience and qualification prerequisites contained in 567—134.7(455B).
- b. The applicant’s name, address and telephone number.

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c. Other information necessary for a determination of the applicant's qualifications.

134.9(3) Training and certification fees. An initial nonrefundable application fee of \$150 in the form of a check or money order payable to the Department of Natural Resources must accompany the initial application for certification and \$50 for each renewal application. The \$150 application fee covers the cost of the certification examination. The department will assess an additional fee for each training course based upon the cost of administration.

134.9(4) An application for certification must be received by the department no later than 60 days prior to the announced date of the certification examination.

134.9(5) An application must be complete upon submission.

134.9(6) An applicant meeting the requirements of this rule will be granted admission to the examination for inspector certification.

567—134.10(455B) Training and certification examination.

134.10(1) Prior to taking the compliance inspector examination, the applicant must:

a. Complete the U.S. EPA UST Web-based training modules: "Introduction to the Underground Storage Tanks (UST) Program" and "Basic UST Inspector Training" with a minimum passing grade of 85 percent.

b. Attend the department's inspector training course or designated approved course.

134.10(2) The department will establish administrative and technical content for the examination and the standards and criteria against which the department will evaluate candidates in determining the fitness of candidates for inspector certification.

134.10(3) At least once in each calendar year, the department will schedule a date and location for the examination for certification of inspectors.

134.10(4) Only applicants who have been authorized by the department to take an examination will be admitted to an examination or issued a certification as a result of passing an examination. Authorization to take an examination will be based on the applicant's compliance with the requirements of this chapter.

134.10(5) To receive a passing grade on the examination, the applicant for certification must achieve a minimum score of 85 percent. An applicant who fails an initial examination may take a second examination.

134.10(6) The application of an applicant who fails the second examination will be terminated. An applicant who fails the second examination may reapply for inspector certification but may not retake the examination until the applicant has successfully completed a regularly scheduled course of instruction that is administered or approved by the department. Successful completion means attendance at all sessions of training and attainment of the minimum passing grade established by the department for the approved training course.

567—134.11(455B) Renewal of certification.

134.11(1) Renewal period. Certification shall be for a two-year period and must be renewed by January 1 of each odd-numbered year, beginning January 1, 2009. Applications for renewal must be submitted on a form provided by the department and no later than 60 days prior to the expiration date. If a certified inspector fails to renew the certification by the expiration date, the department may grant, upon a showing of good cause, a 30-day grace period during which

the applicant may submit the application and payment of the renewal fee as provided in 134.9(3).

134.11(2) Continuing education. Certified inspectors must successfully complete eight hours of training approved by the department to maintain certification.

134.11(3) Minimum inspections. In order to renew certification, an inspector must have conducted at least 25 compliance inspections each year.

567—134.12(455B) Professional liability insurance requirements. All certified compliance inspectors are required to have professional liability insurance with minimum liability limits of \$1 million per occurrence and in the aggregate. All persons covered by the certification provisions of this chapter shall provide written proof of coverage upon request of the department.

567—134.13(455B) Licensed company. A company employing certified UST compliance inspectors shall be registered with the department as a licensed UST compliance company. A company shall lose its license if it fails to employ at least one certified inspector or if it employs uncertified individuals to do compliance inspections required by the department. The annual license fee is \$50.

567—134.14(455B) Compliance inspection. The UST compliance inspector shall conduct a compliance inspection in accordance with the standards set out in this rule and with department written instructions and guidelines. The inspector shall notify the department of the date of a site inspection at least ten days prior to the inspection or another time frame approved by the department.

134.14(1) Inspection process. The inspector shall record the inspection on a form provided by the department and conduct the inspection to address all items contained on the inspection form. The department may approve an alternative inspection form if requested by the inspector. The completed inspection form must be maintained by the inspector or licensed company for five years. Upon completion of the site inspection, the inspector shall send an inspection report to the owner and operator within ten business days, except for the notice of a potential suspected or confirmed release as provided in paragraph "b." At a minimum, the report shall satisfy the following:

a. The inspector shall notify the owner and operator of any compliance violations or deficiencies and those specific actions necessary to correct the violations or deficiencies in accordance with 567—Chapter 135.

b. The inspector shall immediately upon discovery notify the owner and operator of a suspected release as provided in 567—135.6(455B). The notice shall advise the owner and operator of their duty to report the condition to the department within 24 hours or within 6 hours if a hazardous condition exists as defined in 567—131.1(455B) and of their duty to take necessary steps to investigate and confirm suspected releases within the time frames specified in 567—135.6(455B). The inspector shall record in the inspection report submitted to the department the date and time of the notice to the owner and operator.

c. The inspector shall notify the owner and operator of applicable time frames to correct violations or deficiencies if established by rule, or within 60 days of receipt of the inspection report or another reasonable time period approved by the department.

d. The inspector may enter the initial site inspection results electronically as provided in 134.14(2) and complete a follow-up final electronic report as provided below or wait until completion of the follow-up activities to submit a final

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electronic report. In either case, a final electronic report shall be submitted to the department and a copy provided to the owner and operator as provided in 134.14(2), within the following time frames:

(1) Within 10 business days of the inspection, if the results of the inspection find no violations or deficiencies requiring corrective action.

(2) Within 10 business days of the inspector's receipt of all necessary documentation of all action required to correct violations and deficiencies.

(3) In any case, no later than 90 days of the site inspection.

134.14(2) Electronic inspection reporting. The inspector shall prepare an electronic report in accordance with the following:

a. The inspector shall enter the results of the site inspection discovered at the time of the inspection and any actions taken to correct violations and deficiencies on an Internet-based electronic format developed by the department and in accordance with guidance. The department's software will be capable of generating an inspection report.

b. The department will develop a generally compatible electronic platform using XML language. The department will provide the XML schema file format to describe the data needed to allow an inspector to transfer multiple site inspection results in an electronic batch process over the Internet using the department's inspection Web site.

c. The inspector shall provide a print copy of the electronically generated inspection report to the owner and operator or an alternative report approved by the department.

134.14(3) Any evidence of violations or deficiencies observed during the inspection must be photographed using a digital camera with at least a 1-2 megapixel resolution. The digital photographs must be submitted as part of the electronic inspection report and maintained by the inspector for five years as part of the inspector's records.

134.14(4) The inspector must provide any inspection records provided by the owner and operator to the department upon request.

134.14(5) Inspection technical requirements. An inspector of an UST system must check for compliance with the technical standards of 567—Chapter 135 following the department's guidance. The inspection of an UST system currently in operation shall include, but not be limited to, the following:

a. The material currently stored in the UST.

b. The type of tank and lines currently at the site as compared to the registered information on the department's database.

c. Checking site records demonstrating operational compliance, 567—subrule 135.4(5).

d. Checking release detection records, 567—subrule 135.5(6).

e. Visually checking for releases or other violations by opening covers of dispensers, manways, and containment sumps for submersible pumps and other piping connections for:

(1) Indications of a product release and leaking equipment.

(2) Deteriorating product lines or excessive bends in product lines or flex connectors.

(3) Proper anchoring of breakaways (dispensers only).

f. Current operating status of cathodic protection system, if present.

g. Presence and operational condition of spill and overfill equipment, 567—paragraph 135.3(1)“c.”

Any problems observed during the inspection must be photographed using a digital camera with at least a 1-2 megapixel resolution.

567—134.15(455B) Disciplinary actions.

134.15(1) The department may impose disciplinary actions which may include, but are not limited to, notices of deficiency, probationary notices, suspension of a certification or license and, pursuant to 567—134.16(455B), revocation of a certification or license.

134.15(2) A notice of deficiency or probationary notice shall not be an appealable decision. The recipient of a notice may contest the basis for the notice in writing, and such response shall be made part of the certification record. A person subject to a notice to suspend or revoke a certification may appeal the notice as provided in 567—Chapter 7.

134.15(3) The department may suspend the certification of a certified inspector or licensed company for good cause, and based on a single act or omission or repeated acts or omissions. The suspension may require the certified inspector to take remedial measures intended to correct or prevent future acts and omissions. Good cause includes, but is not limited to:

a. A violation of these rules.

b. Negligent misrepresentation of material facts in a compliance report.

c. Negligent failure to identify a material violation of UST operation and maintenance standards set out in 567—134.14(455B).

d. Repeated failure to conduct compliance inspections and submit reports in accordance with the standards set out in 567—134.14(455B).

e. Incompetence on the part of the certified inspector as evidenced by errors in the performance of duties and activities for which the certification was issued.

f. Repeated failure to submit reports of inspection activities to the department or the owner and operator as provided in 567—134.14(455B).

134.15(4) The suspension of a company license or inspector certification shall prevent the company or person from engaging in activities for which certification or licensure is required.

134.15(5) The department may require that the certified inspector successfully complete a special training program, examination or other remedial measures sponsored or approved by the department and designed to strengthen the specific weakness in the certified inspector's performance of duties as identified in the suspension order.

134.15(6) A certified inspector or licensed company shall immediately surrender the certificate or license, as applicable, to the department as of the effective date of a suspension order. The department may reinstate the certification or license if it is determined the person has satisfied the terms of the suspension order and the certification has not expired.

567—134.16(455B) Revocation of inspector certification or company license.

134.16(1) The department may revoke the inspector certification or company license for one or more of the following:

a. Willful disregard of, or willful or repeated violations of, this chapter or 567—Chapter 135.

b. Fraudulent omissions or misstatements of material facts in a compliance inspection report or in other written or oral communications with the department.

c. A knowing and willful failure to detect and report a material violation of UST operation and maintenance stan-

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dards as part of a compliance inspection required by 567—135.20(455B).

d. Acts or omissions warranting suspension after having certification or license previously suspended.

e. The revocation of a certification as an installer or installation inspector under 591—Chapter 15.

134.16(2) A certified inspector or licensed company shall immediately surrender certification or licensing documents after the effective date of a revocation decision.

These rules are intended to implement Iowa Code section 455B.474.

ITEM 5. Amend 567—Chapter 135 by adding the following new rule:

567—135.20(455B) Compliance inspection of UST system.

135.20(1) The owner or operator must have the UST system inspected and an inspection report submitted to the department on a biennial basis by an UST compliance inspector certified by the department under 567—Chapter 134. The initial site inspection shall be submitted to the department no later than December 31, 2007.

135.20(2) Compliance inspection requirements. The owner or operator is responsible to ensure the department receives ten days' prior notice by the compliance inspector of the date of a site inspection and the name of the inspector as provided in 567—134.14(455B). The owner and operator must comply with the following as part of the inspection process.

a. Review and respond to the inspection report provided by the certified compliance inspector and complete the corrective actions specified in the compliance inspection report within the specified time frames.

b. Provide all records and documentation required by the certified compliance inspector and this chapter.

c. Upon notification of a suspected release by the certified compliance inspector pursuant to 567—subrule 134.14(1), report the condition to the department and undertake steps to investigate and confirm the suspected release as provided in 567—135.6(455B).

d. Ensure that the compliance inspector completes and submits an electronic inspection form in accordance with 567—134.14(455B).

135.20(3) The owner and operator shall do the following upon receipt of a compliance inspection report as provided in 567—subrule 134.14(1) which finds violations of the department's rules:

a. Take all actions necessary to correct any compliance violations or deficiencies in accordance with this chapter. Corrective action must be taken within the time frame established by rule or, if no time frames are established by rule, within 60 days of receipt of the inspector's report or another reasonable time period approved by the department. The granting of time to remedy a violation does not preclude the department from exercising its discretion to assess penalties for the violation.

b. Within 60 days of receipt of the inspector's report, provide documentation to the compliance inspector that the violation or deficiencies have been corrected.

c. Conduct a follow-up inspection in instances where there are serious problems or a history of repeated violations when required by the department.

[Filed 3/23/06, effective 5/17/06]

[Published 4/12/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/12/06.

ARC 5043B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 61, "State Parks and Recreation Areas," Iowa Administrative Code.

The amendments accomplish the following:

1. Clarify that a state preserve is dedicated by actions pursuant to Iowa Code section 465C.10.

2. Update the listing to include three new state preserves.

3. Make minor editing changes to state preserve names which do not change the substance of the definition.

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are unnecessary because the amendment updates the state preserves list to include three new dedicated state preserves, makes minor corrections to the spelling and names of state preserves and provides clarification regarding the dedication of state preserves pursuant to Iowa Code section 465C.10.

These amendments are intended to implement Iowa Code sections 461A.3, 465C.8 and 465C.10.

These amendments will become effective May 17, 2006.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

Amend rule **571—61.2(461A)**, definition of "state preserve," as follows:

"State preserve" means the following areas or portion of the areas ~~designated by action of the natural resource commission and state preserves advisory board; dedicated by actions pursuant to Iowa Code section 465C.10:~~

<u>Area</u>	<u>County</u>
A. F. Miller	Bremer
Ames High Prairie	Story
Anderson Prairie	Emmet
Behrens Ponds and Woodland	Linn
Berry Woods	Warren
Bird Hill	Cerro Gordo
Bixby	Clayton
Bluffton Fir Stand	Winneshiek
Brush Creek Canyon	Fayette
Brushy Creek	Webster
Cameron Woods	Scott
Casey's Paha	Tama
Catfish Creek	Dubuque
Cayler Prairie	Dickinson
Cedar Bluffs Natural Area	Mahaska

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<u>Area</u>	<u>County</u>
Cedar Hills Sand Prairie	Black Hawk
Cheever Lake	Emmet
Clay Prairie	Butler
Claybanks Forest	Cerro Gordo
Coldwater Cave	Winneshiek
Crossman Prairie	Howard
Decorah Ice Cave	Winneshiek
Derald Dinesen Prairie	Shelby
Dolittle Doolittle Prairie	Story
<i>Eureka Woods</i>	<i>Greene</i>
Fallen Rock	Hardin
Fish Farm Mounds	Allamakee
Five Ridge Prairie	Plymouth
Fleming Woods	Poweshiek
Fort Atkinson	Winneshiek
<i>Fossil and Prairie Park</i>	<i>Floyd</i>
Freda Haffner Kettlehole	Dickinson
Gitchie Manitou	Lyon
Hanging Bog	Linn
Hardin City Woodland	Hardin
Hartley Fort	Allamakee
<i>Hartman Bluff</i>	<i>Black Hawk</i>
Hayden Prairie	Howard
Hoffman Prairie	Cerro Gordo
Indian Bluffs Primitive Area	Jones
Indian Fish Trap	Iowa
Kalsow Prairie	Pocahontas
Kish-Ke-Kosh <i>Prairie</i>	Jasper
Lamson Woods	Jefferson
Liska-Stanek Prairie	Webster
Little Maquoketa River Mounds	Dubuque
Malanaphy Springs	Winneshiek
Malchow Mounds	Des Moines
Manikowski Prairie	Clinton
Mann Wilderness Area	Hardin
Marietta Sand Prairie	Marshall
Mericle Woods	Tama
Merrill A. Stainbrook	Johnson
Merritt Forest	Clayton
Montauk Historical Site	Fayette
Mossy Glen	Clayton
Mount Talbot	Woodbury and Plymouth
Mt. Mount Pisgah Cemetery	Union
Nestor Stiles <i>Prairie</i>	Cherokee
Ocheyedan Mound	Osceola
Old State Quarry	Johnson
Palisades-Dows	Linn
Pecan Grove	Muscatine
Pellett Memorial Woods	Cass
Pilot Grove	Iowa
Pilot Knob	Hancock
Retz Memorial Woods	Clayton
Roberts Creek	Clayton
Rock Creek Island	Cedar
Rock Island Botanical	Linn
Roggman Boreal Slopes	Clayton
Rolling Thunder Prairie	Warren
Savage Memorial Woods	Henry
Searryl's Cave	Jones
Sheeder Prairie	Guthrie
Silver Lake Fen	Dickinson
Silvers-Smith Woods	Dallas
Slinde Mounds	Allamakee

<u>Area</u>	<u>County</u>
St. James Lutheran Church	Winneshiek
Starr's Cave	Des Moines
Steele Prairie	Cherokee
Stinson Prairie	Kossuth
Strasser Woods	Polk
Sylvan Runkel	Monona
Toolesboro Mounds	Louisa
Turin Loess Hills	Monona
Turkey River Mounds	Clayton
White Pine Hollow	Dubuque
Williams Prairie	Johnson
Wittrock Indian Village	O'Brien
Woodland Mounds	Warren
Woodman Hollow	Webster
Woodthrush Woods	Jefferson

Use and management of these areas are governed by rules established in this chapter as well as by management plans adopted by the preserves advisory board.

[Filed Without Notice 3/23/06, effective 5/17/06]

[Published 4/12/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/12/06.

ARC 5039B**NURSING BOARD[655]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby amends Chapter 3, "License to Practice—Registered Nurse/Licensed Practical Nurse," Iowa Administrative Code.

This amendment returns the nurse license renewal fee to the level set in 2003, eliminating a planned fee increase.

Notice of Intended Action for this amendment was published in the Iowa Administrative Bulletin on January 4, 2006, as **ARC 4792B**. This amendment is identical to that published under Notice.

This amendment will become effective May 17, 2006.

This amendment is intended to implement Iowa Code section 147.80.

The following amendment is adopted.

Amend rule **655—3.1(17A,147,152,272C)**, definition of "fees," numbered paragraph "**8**," as follows:

8. For the renewal of a license to practice as a registered nurse/licensed practical nurse, \$120 99 for a three-year period.

[Filed 3/22/06, effective 5/17/06]

[Published 4/12/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/12/06.

ARC 5031B**PHARMACY EXAMINERS
BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby amends Chapter 2, "Pharmacist Licenses," and Chapter 4, "Pharmacist-Interns," Iowa Administrative Code.

The amendments change the requirements for a foreign pharmacy graduate to demonstrate proficiency in the English language, recognizing the new Internet Based Test of English as a Foreign Language as an alternative to the currently accepted combination of the Test of English as a Foreign Language and the Test of Spoken English, and update the name of the foreign pharmacy graduate certification body.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the January 18, 2006, Iowa Administrative Bulletin as **ARC 4820B**. The Board received no comments regarding the amendments. The adopted amendments are identical to those published under Notice.

The amendments were approved during the March 7, 2006, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on May 17, 2006.

These amendments are intended to implement Iowa Code sections 155A.6 and 155A.9.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [2.10(1), 4.7] is being omitted. These amendments are identical to those published under Notice as **ARC 4820B**, IAB 1/18/06.

[Filed 3/22/06, effective 5/17/06]
[Published 4/12/06]

[For replacement pages for IAC, see IAC Supplement 4/12/06.]

ARC 5032B**PHARMACY EXAMINERS
BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 155A.6, the Board of Pharmacy Examiners hereby amends Chapter 3, "Pharmacy Technicians," Iowa Administrative Code.

The amendment reduces the time within which an individual who assumes the duties of a pharmacy technician is required to register as a pharmacy technician from within 90 days to within 30 days of accepting employment as a pharmacy technician in Iowa.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the January 18, 2006, Iowa Administrative Bulletin as **ARC 4819B**. The Board received comments suggesting that the limit be changed to 60 days rather than 30 days. The Board considered the suggestion but determined that since the subrule requires receipt of the application in the Board office within 30 days, but does not require that the registration process be completed within 30 days of accepting employment as a pharmacy technician, the 30-day grace period is adequate. The adopted amendment is identical to that published under Notice.

The amendment was approved during the March 7, 2006, meeting of the Board of Pharmacy Examiners.

This amendment will become effective on May 17, 2006.

This amendment is intended to implement Iowa Code section 155A.6.

The following amendment is adopted.

Amend subrule 3.3(2) as follows:

3.3(2) Original application required. Any person not currently registered with the board as a pharmacy technician shall complete an application for registration within ~~90~~ 30 days of accepting employment in an Iowa pharmacy as a pharmacy technician. Such application shall be received in the board office before the expiration of this ~~90-day~~ 30-day period.

[Filed 3/22/06, effective 5/17/06]
[Published 4/12/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/12/06.

ARC 5034B**PHARMACY EXAMINERS
BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 155A.13, the Board of Pharmacy Examiners hereby amends Chapter 6, "General Pharmacy Practice," Iowa Administrative Code.

The amendment adds to the list of responsibilities of the pharmacist in charge ensuring adequate space within the prescription department of a secure storage area for the storage of prescription drugs, devices, and controlled substances.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the January 18, 2006, Iowa Administrative Bulletin as **ARC 4818B**. The Board received no comments regarding the amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the March 7, 2006, meeting of the Board of Pharmacy Examiners.

This amendment will become effective on May 17, 2006.

This amendment is intended to implement Iowa Code section 155A.13.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [6.2] is being omitted. This amendment is

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identical to that published under Notice as **ARC 4818B**, IAB 1/18/06.

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[For replacement pages for IAC, see IAC Supplement 4/12/06.]

ARC 5033B**PHARMACY EXAMINERS
BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby amends Chapter 6, "General Pharmacy Practice," Iowa Administrative Code.

The amendment clarifies the provisions regarding patient counseling for new prescriptions, specifically stating that an offer to counsel does not fulfill the counseling requirements imposed by the rule.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the December 21, 2005, Iowa Administrative Bulletin as **ARC 4759B**. The Board received no comments regarding the amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the January 26-27, 2006, meeting of the Board of Pharmacy Examiners.

This amendment will become effective on May 17, 2006.

This amendment is intended to implement Iowa Code section 155A.13.

The following amendment is adopted.

Amend subrule 6.14(1), introductory paragraph, as follows:

6.14(1) Counseling required. Upon receipt of a new prescription drug order and following a prospective drug use review pursuant to 657—8.21(155A), a pharmacist shall counsel each patient or patient's caregiver. *An offer to counsel shall not fulfill the requirements of this rule.* ~~The counseling~~ *Patient counseling* shall be on matters which, in the pharmacist's professional judgment, will enhance or optimize drug therapy. Appropriate elements of patient counseling may include:

[Filed 3/22/06, effective 5/17/06]
[Published 4/12/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/12/06.

ARC 5035B**PHARMACY EXAMINERS
BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 155A.13, the Board of Pharmacy Examiners hereby

amends Chapter 8, "Universal Practice Standards," Iowa Administrative Code.

The amendments clarify the definition of kickbacks and amend the license fee imposed for pharmacy license changes to comply with current fees for a pharmacy license.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the January 18, 2006, Iowa Administrative Bulletin as **ARC 4817B**. The adopted amendments differ from those published under Notice. The Board received one comment regarding the amendments, suggesting that the second sentence in Item 1 be rewritten to make it more understandable. In response to that suggestion, subrule 8.11(5) has been further amended to clarify the requirements and restrictions imposed by that sentence. The Board does not feel that the changes are substantive or require further notice. The new language imposes the same requirements and restrictions established by the existing language.

The amendments were approved during the March 7, 2006, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on May 17, 2006.

These amendments are intended to implement Iowa Code sections 155A.13, 155A.13A, and 155A.19.

The following amendments are adopted.

ITEM 1. Amend subrule 8.11(5) as follows:

8.11(5) Freedom of choice/solicitation/kickbacks/fee-splitting and imprinted prescription blanks or forms. A pharmacist or pharmacy shall not enter into any agreement which negates a patient's freedom of choice of pharmacy services. A pharmacist *or pharmacy* shall not participate in *prohibited* agreements ~~or arrangements~~ with any person, ~~corporation, partnership, association, firm, or others involving premiums,~~ "kickbacks," ~~fee-splitting, or special charges~~ in exchange for recommending, promoting, accepting, or promising to accept the professional pharmaceutical services of any pharmacist or pharmacy ~~as compensation or inducement for placement of business or solicitation of patronage with any pharmacist or pharmacy.~~ "Person" includes an individual, corporation, partnership, association, firm, or other entity. "Prohibited agreements" includes an agreement or arrangement that provides premiums, "kickbacks," fee-splitting, or special charges as compensation or inducement for placement of business or solicitation of patronage with any pharmacist or pharmacy. "Kickbacks" ~~include~~ *includes*, but ~~are~~ *is* not limited to, the provision of medication carts, facsimile machines, any other equipment, or preprinted forms or supplies for the exclusive use of ~~the registrant~~ *a facility or practitioner at no charge or billed below reasonable market rate.* A pharmacist shall not provide, cause to be provided, or offer to provide to any person authorized to prescribe, prescription blanks or forms bearing the pharmacist's or pharmacy's name, address, or other means of identification.

ITEM 2. Amend subrule 8.35(6), introductory paragraph, as follows:

8.35(6) Pharmacy license changes. When a pharmacy changes its name, location, ownership, or pharmacist in charge, a new pharmacy license application with a \$400 license fee *as provided in subrule 8.35(4)* shall be submitted to the board office. Upon receipt of the fee and properly completed application, the board will issue a new pharmacy license certificate. The old license certificate shall be returned

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to the board office within ten days of the change of name, location, ownership, or pharmacist in charge.

[Filed 3/22/06, effective 5/17/06]

[Published 4/12/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/12/06.

ARC 5037B**PHARMACY EXAMINERS
BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 124.301, the Board of Pharmacy Examiners hereby amends Chapter 10, "Controlled Substances," and Chapter 23, "Long-Term Care Pharmacy Practice," Iowa Administrative Code.

The amendments establish a procedure for documentation of controlled substances wasted as a result of drug compounding operations or administration to a patient from a registrant's stock or emergency controlled substance supply. The amendment to subrule 23.21(2) changes an invalid reference to identify renumbered subrule 10.18(3).

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the December 21, 2005, Iowa Administrative Bulletin as **ARC 4760B**. The Board received no comments regarding the amendments. The adopted amendments are identical to those published under Notice.

The amendments were approved during the January 26-27, 2006, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on May 17, 2006.

These amendments are intended to implement Iowa Code section 124.306.

The following amendments are adopted.

ITEM 1. Amend rule 657—10.18(124) by renumbering current subrule **10.18(2)** as **10.18(3)** and adopting the following new subrule 10.18(2):

10.18(2) Waste. Except as otherwise specifically provided by federal or state law or rules of the board, the unused portion of a controlled substance resulting from administration to a patient from a registrant's stock or emergency supply or resulting from drug compounding operations may be destroyed or otherwise disposed of by the registrant or a pharmacist in witness of one other licensed health care provider pursuant to this subrule. A written record of the waste shall be made and maintained by the registrant for a minimum of two years following the destruction or other disposal. The record shall include the signatures of the individual destroying or otherwise disposing of the waste controlled substance and of the witnessing licensed health care provider and shall identify the following:

- a. The controlled substance wasted;
- b. The date of destruction or other disposition;
- c. The quantity or estimated quantity of the wasted controlled substance;

d. The source of the controlled substance, including identification of the patient to whom the substance was administered or the drug compounding process utilizing the controlled substance; and

e. The reason for the waste.

ITEM 2. Amend subrule 23.21(2) as follows:

23.21(2) Destruction or other disposition in the long-term care pharmacy. Controlled substances returned to the pharmacy for destruction or other disposition may be destroyed or otherwise disposed of pursuant to the requirements of 657—subrule ~~10.8(2)~~ **10.18(3)**.

[Filed 3/22/06, effective 5/17/06]

[Published 4/12/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/12/06.

ARC 5036B**PHARMACY EXAMINERS
BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 124.301, the Board of Pharmacy Examiners hereby amends Chapter 10, "Controlled Substances," Iowa Administrative Code.

The amendment requires that the record of dispensing a pseudoephedrine product by a pharmacist be legible and include the total milligrams of pseudoephedrine contained in the dispensed product.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the January 18, 2006, Iowa Administrative Bulletin as **ARC 4816B**. The Board received one comment regarding the amendment. The commenter suggested that the Board establish a standard maximum package size for pseudoephedrine products and restrict the number of packages that could be dispensed by a pharmacist. The Board does not have the authority to dictate the size of drug packages distributed by drug manufacturers. The adopted amendment is identical to that published under Notice.

The amendment was approved during the March 7, 2006, meeting of the Board of Pharmacy Examiners.

This amendment will become effective on May 17, 2006.

This amendment is intended to implement Iowa Code Supplement section 124.212(4).

The following amendment is adopted.

Amend subrule **10.31(7)**, paragraph "**a**," introductory paragraph, as follows:

a. A *legible* dispensing record shall be created and maintained for the dispensing of pseudoephedrine products pursuant to this subrule. The record shall contain the name and address of each purchaser, the name and quantity of the product purchased *including the total milligrams of pseudoephedrine contained in the product*, the date of each purchase, and the name or unique identification of the pharma-

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cist who dispensed the product to the purchaser. The record may be maintained using one of the following options:

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/12/06.

ARC 5024B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Speech Pathology and Audiology Examiners amends Chapter 304, "Discipline for Speech Pathologists and Audiologists," Iowa Administrative Code.

The amendment provides the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 23, 2005, as **ARC 4694B**. A public hearing was held on January 3, 2006, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. However, the Assistant Attorney General commented that the wording of the last sentence of subrule 304.5(3) needed to be clarified and that the Iowa Code reference in subrule 304.5(4) needed to be corrected. The Board approved these changes.

The amendment was adopted by the Board of Speech Pathology and Audiology Examiners on March 10, 2006.

This amendment is intended to implement Iowa Code chapters 21, 147 and 272C.

This amendment will become effective May 17, 2006.

The following amendment is adopted.

Adopt new rule 645—304.5(147) as follows:

645—304.5(147) Order for mental, physical, or clinical competency examination or alcohol or drug screening. A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

304.5(1) Content of order. A board order for a mental, physical, or clinical competency examination shall include the following items:

- a. A description of the type of examination to which the licensee must submit.
- b. The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.
- c. The time period in which the licensee must schedule the required examination.
- d. The amount of time which the licensee has to complete the examination.
- e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.

f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.

g. A requirement that the licensee communicate with the board regarding the status of the examination.

h. A concise statement of the facts relied on by the board to order the evaluation.

304.5(2) Alternatives. Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

304.5(3) Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On judicial review of a board decision in a contested case involving an objection to an examination order, the case will be captioned in the name of Jane Doe or John Doe to maintain the licensee's confidentiality.

304.5(4) Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(1).

304.5(5) Order and reports confidential. An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

304.5(6) Admissibility. In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

304.5(7) Failure to submit. Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

[Filed 3/15/06, effective 5/17/06]

[Published 4/12/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/12/06.

ARC 5028B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Athletic Training Examiners amends Chapter 353, "Discipline for Athletic Trainers," Iowa Administrative Code.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

The amendment provides the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 18, 2006, as **ARC 4810B**. A public hearing was held on February 7, 2006, from 8:30 to 9 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. However, the Assistant Attorney General commented that the wording of the last sentence of subrule 353.5(3) needed to be clarified and that the Iowa Code reference in subrule 353.5(4) needed to be corrected. The Board approved these changes.

The amendment was adopted by the Board of Athletic Training Examiners on March 21, 2006.

This amendment is intended to implement Iowa Code chapters 21, 147, 152D and 272C.

This amendment will become effective May 17, 2006.

The following amendment is adopted.

Adopt **new** rule 645—353.5(152D) as follows:

645—353.5(152D) Order for mental, physical, or clinical competency examination or alcohol or drug screening. A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

353.5(1) Content of order. A board order for a mental, physical, or clinical competency examination shall include the following items:

- a. A description of the type of examination to which the licensee must submit.
- b. The name and address of the examiner or of the examination or treatment facility that the board has identified to perform the examination on the licensee.
- c. The time period in which the licensee must schedule the required examination.
- d. The amount of time which the licensee has to complete the examination.
- e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the examination or treatment facility.
- f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.
- g. A requirement that the licensee communicate with the board regarding the status of the examination.
- h. A concise statement of the facts relied on by the board to order the examination.

353.5(2) Alternatives. Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

353.5(3) Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On judicial review of a board decision in a contested case involv-

ing an objection to an examination order, the case will be captioned in the name of Jane Doe or John Doe to maintain the licensee's confidentiality.

353.5(4) Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(1).

353.5(5) Order and reports confidential. An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

353.5(6) Admissibility. In the event the licensee submits to examination and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

353.5(7) Failure to submit. Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

[Filed 3/21/06, effective 5/17/06]

[Published 4/12/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/12/06.

ARC 5048B**REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 425.37, the Department of Revenue hereby amends Chapter 73, "Property Tax Credit and Rent Reimbursement," Iowa Administrative Code.

The amendment to Chapter 73 adds new rule 701—73.34(425) to allow the Director to approve a claim for property tax credit or rent reimbursement if the facts indicate that not to do so would present a hardship for the claimant.

Notice of Intended Action was published in IAB Vol. XXVIII, No. 17, p. 1271, on February 15, 2006, as **ARC 4887B**.

This amendment is identical to that published under Notice of Intended Action.

This amendment will become effective May 17, 2006, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

This amendment is intended to implement Iowa Code sections 425.16 through 425.40.

The following amendment is adopted.

Amend 701—Chapter 73 by adding the following **new** rule:

701—73.34(425) Unreasonable hardship. In order to avoid any unreasonable hardship to a claimant, the director may review the facts and circumstances of the claim as set forth by the claimant. The director may investigate all factors related to the specific case as deemed appropriate by the director. If the director is satisfied that the claim qualifies as an

REVENUE DEPARTMENT[701](cont'd)

undue hardship for the claimant, the claim will be approved by the director.

This rule is intended to implement Iowa Code section 425.37.

[Filed 3/24/06, effective 5/17/06]

[Published 4/12/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/12/06.

ARC 5049B

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8D.3, the Iowa Telecommunications and Technology Commission hereby amends Chapter 7, "Authorized Use and Users," and Chapter 12, "Rates and Rate Disputes," Iowa Administrative Code.

These amendments are designed to update the Iowa Telecommunications and Technology Commission's rules to implement statutory changes made to Iowa Code chapter 8D pursuant to 2005 Iowa Acts, chapter 178, section 40 (Iowa

Code Supplement section 8D.13(11)), and chapter 179, section 51 (Iowa Code Supplement section 8D.2(5)). These amendments change definitions to reflect changes in Iowa Code chapter 8D, add residents of state facilities as authorized network users, and change the category of expenses for fee allocation for telemedicine and federal government users. The amendments clarify the Commission's administrative rules and follow the changes made in Iowa Code chapter 8D.

These amendments were published under Notice of Intended Action in the February 15, 2006, Iowa Administrative Bulletin as **ARC 4877B**. A public hearing was held March 7, 2006. No comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code Supplement chapter 8D.

These amendments will become effective May 17, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [7.1, 7.5"17," 12.5] is being omitted. These amendments are identical to those published under Notice as **ARC 4877B**, IAB 2/15/06.

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